FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554

August 31, 1998

OFFICE OF MANAGING DIRECTOR

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PEDENAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mark Van Bergh, Esquire Arter & Hadden LLP 1801 K Street, N.W. Washington, D.C. 20006-1301

Re: Fee Control # 9605088195213008

Dear Mr. Van Bergh:

This will respond to your request for refund of an application fee submitted on behalf of Alexander Broadcasting Co., Inc. ("Alexander") in connection with its application for a new FM station at Selma, Alabama.

You maintain that, due to the freeze on processing mutually exclusive broadcast applications, Alexander's application has never received any processing. Further, you state that Alexander and the competing applicants have entered into a settlement agreement, filed with the Commission on January 29, 1998, in which it has agreed to dismiss its application in consideration of a monetary payment. You contend that Alexander is entitled to a refund of its application fee since its application has not been processed and, in view of the requested dismissal of its application, will receive no processing. Consequently, you contend that the Commission has incurred no processing costs involving Alexander's application. Moreover, you argue that a refund is due because the Commission has modified its methodology for selection of broadcast station licensees.

The Commission's rules do not provide for refund of an application fee upon the filing or the grant of a motion to withdraw an application pursuant to a settlement agreement. <u>See</u> Report No. released April 16, 1998, dismissing Alexander's application, as requested, pursuant to its settlement agreement. Further, while the Commission clearly incurred processing costs connected with Alexander's application and settlement agreement, you should note that the Commission has stated that its "processing costs were but one factor that resulted in the legislated fees." See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Act of 1985, 2 FCC Rcd 947, 949 (1987). Moreover, the Commission has explicitly stated that a refund will not be granted once an application has cleared the fee review process, except in certain circumstances enumerated in Section 1.1113 of the Commission's Rules. 47 C.F.R. 1.1113. Section 1.1113(a)(4) of the Rules provides for refund of an application fee when either a change in the rules or in the law nullify an application already accepted for filing. In the case of

Alexander, however, because its application was dismissed on its own volition as part of a settlement agreement rather than as a consequence of a change in the rules or the law rendering it a nullity, no refund is due.

Thus, your request is denied.

Sincerely,

Mark Reger

Chief Financial Officer

9605088195213008 ARTER & HADDEN LAW founded 1843

1801 K Street, N.W. / Suite 400K Washington, D.C. 20006-1301

202/775-7100 telephone 202/857-0172 facsimile ORIGINAL

Los Angeles San Francisco

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APR - 1 1998

FEDERAL CONTINUNICATIONS COMMISSION OFFICE OF THE SECRETARY

FCC SECTION

April 1, 1998

Federal Communications Commission 1919 M Street, N.W. Washington, D.C. 20554 Attention: Managing Director

Re:

Request for Refund of Application Filing Fee

Alexander Broadcasting Co., Inc.

File No. 960507MS

Dear Mr. Fishel:

Mark Van Bergh Direct Dial: (202) 775-7983 E-mail: VanBergh@arterhadden.com

On behalf of Alexander Broadcasting Co., Inc. ("Alexander"), and pursuant to Sections 1.1113 and 1.1117 of the Commission's Rules, the Commission is hereby requested to refund the application filing fee that Alexander submitted to the Commission on May 7, 1996, in connection with Alexander's application for a construction permit for a new FM station at Selma, Alabama. Because the Commission never processed Alexander's application, and Alexander has now requested the Commission to dismiss its application pursuant to a settlement agreement, Alexander is entitled to a refund of its application fee in the amount of \$2,335. In support of this request the following is shown.

Attached to this request are a copies of page 1 of Alexander's FCC Form 301 application showing the relevant fee information, and the transmittal letter and the check in the amount of \$2,335 that accompanied the application. Alexander's application was one of six applications filed for the Selma construction permit. Because of the freeze on the processing of all mutually exclusive broadcast applications the Commission has not processed Alexander's application.

On January 29, 1998, all of the Selma applicants filed a "Joint Request for Approval of Settlement Agreement" in which they requested the Commission to grant the application of Imani Communications Corporation, Inc. ("Imani") and dismiss all of the other applications pursuant

¹ See Public Notice: FCC Freezes Comparative Hearings, 9 FCC Rcd 1055 (1994), modified, 9 FCC Rcd 6689 (1994), further modified, 10 FCC Rcd 12182 (1995).

ARTER & HADDEN

Federal Communications Commission April 1, 1998 Page 2

to a settlement agreement. On March 9, 1998, the Commission gave public notice that it had accepted Imani's application for filing and established April 9, 1998, as the last date for filing petitions to deny. The Commission also stated in the public notice that "no hearing fee is required because . . . (2) the applications are mutually exclusive but a settlement has been filed. All mutually exclusive FM commercial applications which would require hearing fees are currently frozen " See Report No. NA-220, released March 9, 1998.

Alexander requests a refund of the application fee that accompanied its Selma application because the Commission has never processed the application and now, pursuant to a universal settlement, Alexander's application will be dismissed and the application of the single remaining applicant, Imani, will be granted. Although the Commission's rules governing refunds or exemptions from the fee charges do not specifically address this particular situation it is analogous to other circumstances for which the Commission will refund or return an application fee. To the extent necessary, a waiver of the fee requirement is requested. See Section 1.1113(a)(5).

The purpose of the application fee "is to permit the Commission to assess and collect charges for certain of the regulatory services it provides to the public. The charges are based primarily on the Commission's cost of providing these regulatory services." Establishment of a Fee Collection Program, 2 FCC Rcd 947, 948-949 (1987), modified, 2 FCC Rcd 1882 (1987), further modified, 3 FCC Rcd 5987 (1988). When the Commission is not required to undertake the process which underlies a fee, a refund of the previously paid fee is appropriate.

Under Section 1.1113(b)(4), an applicant is entitled to a refund of a hearing fee previously paid if a settlement agreement is filed which "provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable . . . However, if the [remaining] applicant cannot be granted without resolution of issues specified in the designation order, it must pay the hearing fee." Thus, in the hearing context, applicants pay the hearing fee in advance of designation for hearing, but if they enter into a settlement agreement that avoids the need for a hearing the dismissing applicants are entitled to a fee refund because the Commission does not incur the costs associated with the hearing fee payment. The Commission deems the imposition of a hearing fee in cases which require no hearing process fundamentally unfair. See Establishment of a Fee Collection Program, 3 FCC Rcd 5987, 5990 (1988). If, however, the remaining applicant must partake in a hearing proceeding to resolve outstanding issues, then it is required to pay the hearing fee. Ibid.

The circumstances for the Selma applicants are substantially the same. The settlement agreement among the Selma applicants is similar in all respects to the conditions described in Section 1.1113(b)(4) except that the settlement occurred before designation for hearing and before the Commission processed the applications. Alexander and the other Selma applicants, except Imani, are requesting the dismissal of their applications. Only Imani, as the remaining applicant

ARTER & HADDEN

Federal Communications Commission April 1, 1998 Page 3

will have its application processed and granted. Because the applications of the dismissing applicants have undergone no application processing, those applicants should receive a refund of their application fee. Just as in the context of a refundable hearing fee, the Commission has incurred no costs normally associated with the fee. However, the Commission is processing Imani's application which is, therefore, subject to the application fee.

Additionally, the freeze on the processing of mutually exclusive applications resulted from a new Commission policy adopted after the implementation of the fee collection program. Although the Commission froze the filing of all applications for new broadcast stations in 1994, it ultimately modified the freeze to the extent of receiving applications, but if mutually exclusive applications were filed the Commission would not process them. See footnote 1, supra. Thus, the Commission's policies concerning the filing freeze and subsequent processing freeze meant that Alexander had to file its application and pay the application fee during the announced filing window for the Selma FM channel in order to protect and pursue its interest in obtaining the Selma construction permit. But those same policies and the subsequent settlement (entered into pursuant to a recent Commission policy temporarily waiving its settlement rules), have rendered the application a nullity. In analogous situations, where a new rule is adopted that renders an accepted application a nullity the applicant is entitled to a refund of its application fee. See Section 1.1113(a)(4).

Although the Commission's rules do not specifically contemplate a refund of the application fee for applicants that are in Alexander's position, the conditions that gave rise to these circumstances arose after the Commission adopted the fee rules and procedures and were not contemplated or addressed at that time. Because the rules do not specifically contemplate the current circumstances, a waiver of the filing fee requirement may be necessary for the Commission to issue the fee refund. The Commission considers waivers on a case-by-case basis. See Establishment of a Fee Collection Program, 2 FCC Rcd at 961. Here there is no public interest in having an applicant reimburse the Commission for the services normally associated with the application fee because the Commission was not required to and did not provide those services. See Ibid. Because the public interest normally associated with the fee collection program is not applicable, i.e., the Commission has not incurred the costs normally associated with processing an application, a waiver of the fee requirement and refund of the \$2,335 application fee that Alexander previously paid is appropriate.

ARTER & HADDEN...

Federal Communications Commission April 1, 1998 Page 4

Should you require any additional information or if any question arises concerning this request, please contact undersigned counsel.

Sincerely,

Mark Van Bergh

Enclosures

ECCIMPLION MAY UT 1000

R&E

RETURN COPY

ROBERTS & ECKARD, P.C.

ATTORNEYS AT LAW

JAMES S. BLITZ
JOY R. BUTLER
PAMELA C. COOPER
ANATOLIO B. CRUZ III*
LINDA J. ECKARD
KENNETH M. KAUFMAN
MARY L. PLANTAMURA
LAWRENCE ROBERTS
PETER D. SHIELDS
MARK VAN BERGH**
LISA A. WILLIAMS***

*ADMITTED IN PA ONLY
**OF COUNEZ.
***ADMITTED IN NO ONLY
***ADMITTED IN NO ONLY

1150 CONNECTICUT AVENUE, N.W., SUITE 1100 WASHINGTON, D.C. 20036

TELEPHO (202) 296-0

TELEFA! (202) 296-0

May 7, 1996 ____

Federal Communications Commission Mass Media Services Post Office Box 358195 Pittsburgh, Pennsylvania 15251-5195

Re: Alexander Broadcasting Company, Inc. Channel 287C2, Selma, Alabama

Form 301 Application

Dear Sir or Madame:

On behalf of Alexander Broadcating Company, Inc., submitted herewith in triplicate is a Form 301 application for a construction permit for a new FM station on Channel 287C2 at Selma, Alabama. Submitted with this application is a check in the amount of \$2,335.00 to cover the required filing fee.

Should any question arise concerning this matter please contact undersigned counsel.

Sincerely,

Mark Van Besch

ENTC vd Davoroca 3060-0027 Expiret 6/30/95

FCC 301

FOR FCC USE ONLY

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

FOR COMMERCIAL				
				*
FLE NO.				
Section I - GENERAL INFORM	ATION			
L APPLICANT NAME				
Alexander Broadcast	ing Co., Inc.			
MAILING ADDRESS (Line 1)	(Maximum 35 characters)			
273 Persimmon Tree I				
MAILING ADDRESS (Line 2)	(If required) (Maximum 35	characters)		•
CITY		STATE OR COUNTRY	(if foreign address)	ZIP CODE
Selma		Alabama		36701
TELEPHONE NUMBER (inclu	de area code)	CALL LETTERS	OTHER FCC IDENT	IFIER (IF APPLICA
(334) 875-9360		NEW		
FOR MAILING THIS APPLICA	TION, SEE INSTRUCTIONS FO	R SECTION 1 - GENE	RAL INFORMATION B	·
2 A. is a fee submitted with	h this application?			YX Yes N
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C. If Yes, provide the formation of the correction of the correcti	ollowing information:	vice you are applying for Fee Multiple applicable	or. Fee Type Codes m	inter in Column (C)
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BY: FEE CONTROL NUMBER

Fee Control Number Payor Name Account Number Received Date

9605088195213008 ALEXANDER BROADCASTING CO INC FCC2015590 05/07/96

273 PERSIMMON TREE RD

SELMA

AL

36701

			Payment	t	Callsign				•		
Payment	Current Balance	Seq Num	Type Code	Quantity	Other	Applicant Name	Applicant Zip	Bad Check		Trans Code	Payment
_Amount			Code	Quantity	ld		<u> </u>				Tvpe
\$2,335.00	\$2,335.00	1	MTR	1	NEW	ALEXANDER BROADCASTING CO INC	36701		\$2,335.00	1	PMT
Total 1									\$2,335.00		

FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554

August 31, 1998

OFFICE OF MANAGING DIRECTOR

Steven J. Horvitz, Esquire Christopher T. McGowan, Esquire Cole, Raywid & Braverman 1919 Pennsylvania Avenue, N.W. Suite 200 Washington, D.C. 20006

RECEIVED

OCT - 8 1998

FEDERAL COMMINICATIONS COMMISSION OFFICE OF THE SECRETARY

Re: ALEXCOM, L.P. Fee Control # 9508018205514002

Dear Messrs. Horvitz and McGowan:

This will respond to your request for waiver and refund of the filing fee submitted on behalf of ALEXCOM, L.P. ("ALEXCOM") in connection with its petition for special relief.

You have represented, and our records reflect, that ALEXCOM, parent company of Tennessee Cablevision, Inc. and Smyrna Cable TV, Inc., sought and was granted "small systems" status for the purpose of rate and related administrative relief under the Commission's Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, 10 FCC Rcd 7393 (1995) ("Small Systems Order").

In the Small Systems Order, the Commission expanded the definition of small cable systems and companies to include cable systems serving 15,000 or fewer subscribers that were owned by cable companies serving collectively 400,000 or fewer subscribers. See 47 C.F.R. §§ 76.901(c) and (e). The Commission expanded the definition of qualifying small cable systems and companies "to encompass the broader range of operators" in need of rate and other administrative relief, in recognition of the fact "that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition." 10 FCC Rcd at 7406.

In the Small Systems Order, the Commission stated that petitions for special relief would be entertained for cable systems and companies that exceed the subscriber caps, but nevertheless share the same relevant characteristics and thus would benefit from the same rate and administrative relief. 10 FCC Rcd at 7412-13. The Cable Bureau found that Tennessee Cablevision, Inc. served 18,549 subscribers; that Smyrna Cable TV, Inc. served 23,900 subscribers, respectively; that ALEXCOM collectively served 42,539 subscribers, well below the 400,000 subscriber cap; that ALEXCOM shared the relevant characteristics of small companies; and thus that ALEXCOM would be afforded the same regulatory treatment. See Memorandum Opinion and Order, DA 97-1836 (August 27, 1997).

Messrs. Horvitz and McGowan Page 2

With respect to ALEXCOM's fee waiver request, the Commission did provide small cable systems and companies relief from section 9 regulatory fees, by establishing an assessment formula based upon the exact subscriber count, thereby relieving small cable systems and companies from "bearing a disproportionate burden of the aggregate cable service regulatory fee imposed upon the industry as a whole." See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 9 FCC Rcd 5333, 5368 (1994); see also Small Systems Order, 10 FCC Rcd at 7398. The Commission, however, did not declare a policy or adopt-new rules that would nullify ALEXCOM's petition for special relief. See 47 C.F.R. § 1.1113(a)(4). In absence of such a declaration or adoption of such rules, the Commission may only waive the section 8 filing fee requirement upon a showing of good cause and a finding that the public interest will be served thereby. See 47 U.S.C. § 158(d)(2); see also Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Reconciliation Act of 1985, 2 FCC Rcd 947, 961 (1987); 47 C.F.R. § 1.1117(a). In its petition for waiver of the \$910.00 section 8 filing fee, ALEXCOM represents that the payment of costly filing fee represents a considerable expense for, and undermines the Small Systems Order, which was intended to afford regulatory relief to, small cable companies.

It appears that ALEXCOM's waiver and refund request, thus, is based on an assertion of compelling financial hardship. For financial hardship, a more detailed showing is required to establish good cause. For instance, ALEXCOM should submit information such as a balance sheet, profit and loss statement, and/or a cash flow projection. At this juncture, ALEXCOM has neither made a sufficient showing of good cause, nor has it shown that the public interest would be served by a waiver of the filing fee requirement.

ALEXCOM's petition for waiver and refund of the filing fee requirement accordingly is denied without prejudice. If you have any questions concerning this matter, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,

Chief Financial Officer

9508018205514002 DUPLICATE

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In re Alexcom, L.P.)
Oak Ridge, TN (TN0045) Cobb County, GA (GA0203, GA0016))

PETITION FOR WAIVER

Alexcom, L.P., the parent company of Tennessee Cablevision, Inc., and Smyrna Cable TV, Inc., ("Alexcom"), by its attorneys, hereby petitions for a waiver of the Commission's filing fee requirements. Alexcom is asking in an attached Petition for Special Relief that it be afforded the relatively new Form 1230 "small system" treatment pursuant to the Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266, 93-215, FCC 95-196 (June 5, 1995) (the "Small Systems Order"). Although Alexcom is enclosing a check for the correct amount with this filing, it now asks that the fee be waived and the check returned to undersigned counsel.

Alexcom contends that the *Small Systems Order* could not have possibly meant to predicate small system relief on the payment of high filing fees. The Commission's intent in drafting the *Small Systems Order* was to provide considerable regulatory relief to small systems that are owned by small cable companies. The Commission was clearly concerned about the deleterious effects of extensive regulation on this section of the cable industry. At Paragraph 36 of the Small Systems Order, the Commission announced that it would entertain

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petitions for special relief from systems who fail to meet the new definitions but are able to demonstrate that they share relevant characteristics with qualifying systems. The attached petition is submitted pursuant to that invitation.

Alexcom contends that requiring it to file a \$910 fee along with the Petition for Special Relief is imposing the very sort of regulatory burden that the *Small Systems Order* sought to avoid. As set out in the attached Petition for Special Relief, Alexcom's two systems are each barely over the 15,000 subscriber count. It seems patently unjust that a system whose subscriber count slightly exceeds the numerical cap designated in the rules would have to pay nearly one thousand dollars only to apply to receive the same type of regulatory treatment as a system with only slightly fewer subscribers. *See, Small Systems Order*, at ¶36. Surely, the Commission does not want to impede and undermine the important regulatory benefits allowed by the *Small Systems Order* by insisting on a costly filing fee.

CONCLUSION

For the foregoing reasons, Alexcom respectfully requests that the Commission grant the requested relief as soon as possible.

Respectfully submitted, ALEXCOM, L.P.

By:

Steven J. Horvitz

Christopher T. McGowan

COLE, RAYWID & BRAVERMAN

1919 Pennsylvania Avenue, N.W.

Suite 200

Washington, D.C. 20006

(202) 659-9750

Its Attorneys

July __, 1995

Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
Alexcom, L.P.)	CSR No. 4568-D
Petition for Special Relief)	

MEMORANDUM OPINION AND ORDER

Adopted: August 25, 1997 Released: August 27, 1997

By the Chief, Cable Services Bureau:

I. INTRODUCTION

- 1. Here we address a petition for special relief ("Petition") in which Alexcom, L.P. ("Alexcom") seeks a waiver of the Commission's rules to the extent necessary to permit Alexcom to establish regulated cable rates on behalf of Tennessee Cablevision, Inc., ("Tennessee Cable") and Smyrna Cable TV, Inc. ("Smyrna Cable") in accordance with the small system cost-of-service methodology adopted in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92-266 and 93-215 ("Small System Order"). Subsequently, Alexcom filed a letter ("Supplemental Letter") augmenting its earlier filing and providing further information on the systems in question. No oppositions were filed in this proceeding.
- 2. Section 623(i) of the Communications Act of 1934, as amended ("Communications Act"), requires that the Commission design rate regulations that reduce the administrative burdens and the cost of regulatory compliance for cable systems with 1,000 or fewer subscribers.² Accordingly, in the course of establishing the standard benchmark and cost-of-service ratemaking methodologies generally available to cable operators, the Commission adopted various measures aimed specifically at easing regulatory burdens for these smaller systems.³ In the Small System Order, the Commission further extended small system rate relief to certain systems that exceed the 1,000-subscriber standard.⁴ These systems were

FCC 95-196, 10 FCC Rcd 7393 (1995). In a separate petition, Alexcom requested a waiver of the \$910 filing fee that it was required to submit under 47 C.F.R. § 1.1106. Because this issue falls within the purview of the Commission's Office of Managing Director, we have forwarded this request to that office for resolution.

² 47 U.S.C. § 543(i).

See, e.g., Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993); Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994); Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking in MM Docket Nos. 93-215 & 93-266, 9 FCC Rcd 5327 (1994); Eighth Order on Reconsideration in MM Docket Nos. 92-266 & 93-215, FCC 95-42, 10 FCC Rcd 5179 (1995).

⁴ Small System Order, 10 FCC Rcd at 7406.

deemed eligible for small system rate relief because they were found to face higher costs and other burdens disproportionate to their size.

- The Small System Order defines a small system as any system that serves 15,000 or fewer subscribers. The Commission recognized that systems with no more than 15,000 subscribers were qualitatively different from larger systems with respect to a number of characteristics, including: (1) average monthly regulated revenues per channel per subscriber; (2) average number of subscribers per mile; and (3) average annual premium revenues per subscriber. The magnitude of the differences between the two classes of systems as to these characteristics indicated that the 15,000 subscriber threshold was the appropriate point of demarcation for purposes of providing for substantive and procedural regulatory relief.
- A. Rate relief provided under the Small System Order and the Commission's rules is also available only to a small system affiliated with a small cable company, which is defined as a cable operator that serves a total of 400,000 or fewer subscribers over all of its systems. The Commission adopted this threshold because it roughly corresponds to \$100 million in annual regulated revenues, a standard the Commission has used in other contexts to identify smaller entities deserving of relaxed regulatory treatment. The Commission found that cable companies exceeding this threshold would find it easier than smaller companies to attract the financing and investment necessary to maintain and improve service. In addition, the Commission determined that cable companies that exceeded the small cable company definition "are better able to absorb the costs and burdens of regulation due to their expanded administrative and technical resources."

Id. at 7407 More recently. Congress amended Section 623 of the Communications Act to allow greater deregulation for "small cable operators." defined as operators that "directly or through an affiliate, [serve] in the aggregate fewer than 1 percent of all subscribers in the United States and [are] not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." Telecommunications Act of 1996 ("1996 Act"), Pub. L. No. 104-104, § 301(c), 110 Stat. 56, approved February 8, 1996; Communications Act, § 623(m), 47 U.S.C. § 543(m). Pursuant to this amendment, the rate regulation requirements of Sections 623(a), (b) and (c) do not apply to a small cable operator with respect to "(A) cable programming services, or (B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994," in areas where the operator serves 50,000 or fewer subscribers. Id.

^b Small System Order, 10 FCC Rcd at 7406.

⁷ Id. at 7408.

Id.

⁹ Id. A small system is deemed affiliated with a cable company if the company "holds more than a 20 percent equity interest (active or passive) in the system or exercises de jure control (such as through a general partnership or majority voting shareholder interest)." Id. at 7412-13, n.88.

¹⁰ Id. at 7409-11.

¹¹ Id. at 7411.

¹² Id. at 7409.

- In addition to adopting the new categories of small systems and small cable companies, the *Small System Order* introduced a form of rate regulation known as the small system cost-of-service methodology.¹³ This approach, which is available only to small systems owned by small cable companies, is more streamlined than the standard cost-of-service methodology available to cable operators generally. In addition, the small system rules include substantive differences from the standard cost-of-service rules to take account of the proportionately higher costs of providing service faced by small systems. Eligible systems establish their rates under this methodology by completing and filing FCC Form 1230. In order to qualify for the small system cost-of-service methodology, systems and companies must meet the new size standards as of either the effective date of the *Small System Order*, or on the date thereafter when they file the documents necessary to elect the relief they seek.¹⁴
- 6. Cable systems that fail to meet the numerical definition of a small system, or whose operators do not qualify as small cable companies, may submit petitions for special relief requesting that the Commission grant a waiver of its rules to enable the petitioning systems to utilize the various forms of rate relief available to small systems owned by small cable companies.¹⁵ The Commission stated that petitioners should demonstrate that they "share relevant characteristics with qualifying systems." Other potentially pertinent factors include the degree by which the system fails to satisfy either or both definitions and evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator. 17 If the system fails to qualify for relief based on its affiliation with a larger cable company. the Commission will consider "the degree to which that affiliation exceeds our affiliation standards, and whether other attributes of the system warrant that it be treated as a small system notwithstanding the percentage ownership of the affiliate."18 The Commission also stated that "a qualifying system that seeks to obtain programming from a neighboring system by way of a fiber optic link, but that is concerned that interconnection of the two systems may jeopardize its status as a stand-alone small system, may file a petition for special relief to ask the Commission to find that it is eligible for small system relief.¹⁹ The Commission specifically stated that this list of relevant factors was not exclusive and invited petitioners to support their petitions with any other information and arguments they deemed relevant.²⁰

II. THE PETITION

7. Alexcom owns and operates two stand-alone cable systems: Tennessee Cable and Smyrna Cable. Alexcom is not affiliated with any other cable system. Alexcom states that, as of June 1, 1995,

¹³ Id. at 7418-28.

¹⁴ Id. at 7413. The effective date of the Small System Order was August 21, 1995.

¹⁶ Id. at 7412-13.

¹⁶ *Id*.

¹⁷ Id.

¹⁸ Id

¹⁹ Id. at 7413.

²⁰ Id.

Tennessee Cable served a total of 18,549 subscribers and Smyrna Cable served a total of 23,990 subscribers, for a total of 42,539 subscribers,²¹ as compared to the definitions of a "small system" and a "small cable company," which contain subscribership caps of 15,000 and 400,000 subscribers, respectively. Therefore, while Alexcom easily qualifies as a small cable company under the Small System Order,²² Tennessee Cable and Smyrna Cable both exceed the 15,000-subscriber threshold for a small system, thus making each ineligible for the small system cost-of-service rules absent a waiver.²³

- Alexcom argues that despite the fact that its two systems exceed the numerical subscriber cap for small systems, they are the sort of entities that the Commission has targeted for special relief.²⁴ Alexcom notes that, as discussed above, the Commission found in the Small System Order that, in certain circumstances, flexibility may be appropriate in applying our standards for small system status. Alexcom argues that it would be illogical to deny its Tennessee Cable and Smyrna Cable small system status because Alexcom easily passes the definition of a small cable company and the two systems either closely resemble the average small system or at least fall between the two classifications of systems with fewer than 15,000 subscribers and systems with more than 15,000 subscribers.²⁵
- In support of its Petition, Alexcom states that both Tennessee Cable and Smyrna Cable share the characteristics of the average small system set forth in the Small System Order. Specifically, Tennessee Cable: (a) yields an average monthly regulated revenue per channel per subscriber of \$0.76, as compared to \$0.86 yielded by the average small system; (b) serves an average of 35.4 subscribers per mile, versus 35.3 subscribers per mile served by the average small system; and (c) receives \$39.00 in average annual premium revenue per subscriber, as compared to \$41.00 received by the average small system. With respect to Smyrna Cable: (a) the average monthly regulated revenue per channel per subscriber is \$0.72: (b) the average number of subscribers per mile is 56.7; and (c) the average annual premium revenue per subscriber is \$65.00. We note that the respective figures for the average system with more than 15,000 subscribers are: (a) \$0.44; (b) 68.7 subscribers; and (c) \$73.13. Alexcom contends that the facts surrounding its Petition are more favorable than those surrounding a petition for special relief filed by Insight Communications Company. L.P. ("Insight"), where we granted small system

Petition at 2.

See supra note 9.

²⁵ Id. at 1.

Petition at 1.

²⁵ Id. at 2-3 and Supplemental Letter at 2.

Supplemental Letter at 2. See Small System Order, 10 FCC Rcd at 7408.

²⁷ Id.

²⁸ Id.

status to three of Insight's cable systems that served 17,798, 16,328 and 16,348 subscribers, respectively, notwithstanding Insight's total subscribership of about 158,000 subscribers.²⁹

- 10. With respect to its costs of providing service, Alexcom states that its management team is comprised of only three people, and that its two systems face the same financial constraints as other small cable operators. Alexcom states that it cannot avail itself of bulk discounts for programming and equipment that typically are available to larger systems.³⁰ Alexcom also asserts that its operating costs are relatively high because of its long-standing commitment to providing "first class" cable service.³¹ This service includes offering service in very low density areas, supporting local origination programming, participating in the "Cable in the Classroom" program, donating equipment to local educational institutions, and generally supporting the local community.³² Alexcom adds that its costs of obtaining financing are relatively high because larger systems typically enjoy many more options for raising capital. This circumstance makes it far easier for larger operators to increase revenues by rolling out new services, rebuilding plant and maintaining their quality of service.³³
- 11. Finally, Alexcom asserts that grant of its Petition will serve the public interest. Alexcom states that its "financial problems are exacerbated" by the costs of compliance with federal and local rate regulation, which are high on a per-subscriber basis.³⁴ Alexcom states that the requested relief will alleviate some of these constraints and provide it with the financial certainty essential for definitive rates over a longer period of time. In turn, this financial certainty will help Alexcom to secure the financing needed to rebuild its systems so that "they can offer the full range of services the cable industry has to offer."³⁵

III. DISCUSSION

12. We begin with a comparison of Alexcom's total subscribership to the definition of a small cable company, and of the respective subscriber bases of Tennessee Cable and Smyrna Cable to the definition of a small cable system. Since Alexcom is not affiliated with any other cable system, and its systems serve a total of 42,539 subscribers, Alexcom clearly falls below the 400,000-subscriber threshold for a small cable company.³⁶ Both Tennessee Cable and Smyrna Cable exceed the 15,000-subscriber

Memorandum Opinion and Order, In the Matter of Insight Communications Company, L.P., Petition for Special Relief, DA 95-2334, 11 FCC Rcd 1270 (1995).

Petition at 3.

³¹ *ld*.

³² Id. at 4.

³³ Id.

³⁴ Id.

³⁵ *Id.* at 4-5.

ld. at 2; see Small System Order, 10 FCC Rcd at 7412-13.

threshold for a small system, as the former serves 18,549 and the latter serves 23,990 subscribers. As stated in the Small System Order, special relief may be provided to cable systems which fail to meet the definition of either a small cable company or a small system but are able to demonstrate that they share relevant characteristics with qualifying systems. The threshold question is whether the amounts by which Tennessee Cable and Smyrna Cable exceed the small system definition defeat Alexcom's request in light of other relevant characteristics each may share with the average small system.

- 13. Based on the record before us, we find that Tennessee Cable is entitled to special relief in order to qualify for small system status. Tennessee Cable serves 18,549 subscribers, or 23.66% over the small system threshold. In light of other factors relevant to Tennessee Cable's status, we find that this disparity does not substantially impair Tennessee Cable's eligibility for regulatory relief. We have previously granted small system status to cable systems that exceed the 15,000 subscriber limit where it has been shown that the cable system shares other relevant characteristics with small systems. On a per subscriber basis, Tennessee Cable receives \$0.76 in monthly regulated revenue per channel and \$39.00 in annual premium revenues, which is closer to the amounts received by the average small system (\$0.86 and \$41.00, respectively) than to those of larger systems (\$0.44 and \$73.13, respectively). Moreover, Tennessee Cable serves 35.4 subscribers per mile, which is virtually the same as the average subscriber density observed on small systems (35.3). We find this last circumstance especially persuasive, because sparse subscriber density dictates that fewer subscribers are available to support a given amount of physical plant, leading to higher costs per subscriber.
- 14. We will also grant small system relief to Smyrna Cable. Although Smyrna Cable serves 23,990 subscribers, we note that we have previously granted regulatory relief for a system serving nearly 23,000 subscribers. In the *Inter Mountain Order*, we granted relief for a system serving 22,763 subscribers stating that it would be "somewhat anomalous to withhold from Inter Mountain the regulatory relief that is automatically available to much larger companies that seemingly are in less need of such relief, particularly given that Inter Mountain has only a single system." Alexcom, like Inter Mountain, falls well within the definition of a small cable company, and Alexcom owns only two systems that require special relief in order to qualify for small system status. In addition, Alexcom's Smyrna Cable

Petition at 2; see Small System Order, 10 FCC Rcd at 7406.

³⁸ Small System Order at 7412.

See, e.g., Insight Order (granting small system status to, among many other much smaller systems, three systems serving 17,798, 16,328 and 16,348 subscribers, respectively); Memorandum Opinion and Order, In the Matter of Rifkin & Associates d/b/a Columbia Cablevision, Petition for Special Relief, DA 96-2026 (released December 4, 1996) (granting small system status to system serving 17,083 subscribers).

See supra para. 9.

⁴¹ Id.

⁴² Memorandum Opinion and Order, In the Matter of Inter Mountain Cable, Inc., Petition for Special Relief, DA 96-940, 11 FCC Rcd 7081 (1996) ("Inter Mountain Order") (granting a waiver to a system serving 22.763 subscribers).

Inter Mountain Order, 11 FCC Rcd at 7086.

system appears to share relevant characteristics with small systems. Smyrna Cable's average monthly regulated revenue per channel per subscriber of \$0.72 is similar to the \$0.86 received by small systems. Smyrna Cable's average subscriber density and average annual premium revenue per subscriber fall in between the averages for larger and small systems. Alexcom also claims that it is not able to acquire bulk discounts for programming or equipment, that it has high operating costs, and that it has fewer resources for obtaining financing than larger systems. Moreover, Alexcom's management team for both systems consists of only three people. We believe that adding to Alexcom's already high costs by denying rate relief to Smyrna Cable might unnecessarily hinder Alexcom's ability to serve subscribers, and that the financial benefits that result from small system relief will ultimately enable Alexcom to provide better service.

15. A final factor weighing in favor of granting small system status for Alexcom's Tennessee Cable and Smyrna Cable systems is the absence of any opposition to Alexcom's Petition, despite service of the Petition upon the relevant local franchising authorities and public notice of the Petition by the Commission. Based on all of the factors discussed above, we find that Alexcom's Tennessee Cable and Smyrna Cable systems are entitled to special relief and should be granted small system status.

IV. SCOPE OF THE WAIVER

- 16. As a result of our grant of the Petition, Tennessee Cable and Smyrna Cable shall be deemed small systems for purposes of rate regulation. Accordingly, to the extent the systems' BST and/or CPST offerings are subject to rate regulation, 45 the systems may now set rates prospectively in accordance with the small system cost-of-service methodology.
- 17. We next must determine the duration of the waiver. In the Small System Order, after establishing the new small system and small cable company definitions, the Commission stated:

To qualify for any existing form of [small system] relief, systems and companies must meet the new size standards as of either the effective date of this order or on the date thereafter when they file whatever documentation is necessary to elect the relief they seek, at their election.

A system that is eligible for small system relief on either of the dates described above shall remain eligible for so long as the system has 15,000 or fewer subscribers, regardless of a change in the status of the

⁴⁴ Petition at 3-4.

As of the 1996 Act's enactment on February 8, 1996, rate regulation does not apply to a small cable operator with respect to CPSTs, or a BST that was the only service tier subject to regulation as of December 31, 1994. For purposes of this provision, a "small cable operator" is defined as one that, directly or through an affiliate, serves in the aggregate fewer than 615,000 subscribers and is not affiliated with any entity whose gross annual revenues exceed \$250,000,000. 47 U.S.C. § 543(m); Order and Notice of Proposed Rulemaking in CS Docket No. 96-85, 11 FCC Rcd 5937, 5947 (1996). As discussed above, small system relief under our rules is available only to systems that serve fewer than 15,000 subscribers and are not affiliated with a cable operator that serves more than 400,000 subscribers, absent a waiver. See supra paras. 3-4. Accordingly, a rate complaint that is filed concerning a cable system that is deemed a small system under our rules may not invoke rate regulation of the system's CPST, or of its BST if the BST was the only service tier subject to regulation as of December 31, 1994.

company that owns the system. Thus, a qualifying system will remain eligible for relief even if the company owning the system subsequently exceeds the 400,000 subscriber cap. Likewise, a system that qualifies shall remain eligible for relief even if it is subsequently acquired by a company that serves a total of more than 400,000 subscribers.⁴⁶

- 18. The Commission adopted this grandfathering treatment for qualifying systems to enhance their value "in the eyes of operators and, more importantly, lenders and investors." As the Commission stated: "The enhanced value of the system thus will strengthen its viability and actually increase its ability to remain independent if it so chooses."
- 19. Upon exceeding the 15,000 subscriber threshold, a system that has established its rates in accordance with the small system cost-of-service methodology:
 - . may maintain its then existing rates. However, any further adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with our benchmark or cost-of-service rules.⁴⁹
- 20. Since Tennessee Cable and Smyrna Cable already exceed 15,000 subscribers, there is no obvious numerical limit to serve as a cutoff for their continued eligibility for small system treatment. However, it is reasonable to presume that the systems will continue to grow. Thus, we must place some duration on the waiver, since the alternative would be to grant small system status indefinitely, regardless of the eventual size of the systems. This latter alternative is clearly inconsistent with the Commission's decision to limit small system relief to systems that are in need of it due to their relatively small size.
- Therefore, as we have ordered in the context of similar waiver situations, the waiver for Tennessee Cable and Smyrna Cable will terminate two years from the date of this order, subject to the conditions set forth below. During the waiver period, Tennessee Cable and Smyrna Cable may file only one Form 1230 for each franchise area they serve. This should give Tennessee Cable and Smyrna Cable adequate regulatory certainty for the foreseeable future, while still ensuring that the systems are not permitted to charge rates indefinitely under a scheme designed for smaller systems. Of course, Tennessee Cable and Smyrna Cable may seek continued eligibility for small system treatment by filing a petition for special relief at the end of the waiver period.

Small System Order, 10 FCC Rcd at 7413. The quoted text was discussing a system's initial and continuing eligibility for "any existing form of relief," which did not include the small system cost-of-service methodology. However, later in the Order the Commission applied the same eligibility standards to that methodology as well. Id. at 7427-28.

⁴⁷ *Id.* at 7413.

⁴¹ *Id*.

⁴⁹ Id. at 7427-28.

Insight Order, 11 FCC Rcd 1276; Inter Mountain Order, 11 FCC Rcd at 7090.

- 22. Limiting the waiver period to two years means that any Form 1230 to be filed by Tennessee Cable or Smyrna Cable must be submitted with the appropriate regulatory authorities within two years of the date of this order. In any franchise area where the systems are currently subject to regulation, Tennessee Cable and Smyrna Cable may reestablish their maximum permitted rates by filing Form 1230 at any time in the next two years. Where the systems are not currently subject to regulation but, within the next two years, become subject to regulation due to the certification of a local franchising authority or the filing of a rate complaint, Tennessee Cable and Smyrna Cable then may file Form 1230 within the normal response time. Where the systems are not now subject to regulation, and do not become subject to regulation until more than two years from now, Tennessee Cable and Smyrna Cable will not be eligible for small system treatment under this waiver.
- 23. After filing their initial Form 1230s and giving the required notice, Tennessee Cable and Smyrna Cable may set their actual rates in a particular franchise area at any level that does not exceed the maximum rate, subject to the standard rate review process. Subsequent increases, not to exceed the maximum rate established by the Form 1230, shall be permitted, subject to the 30 days' notice requirement of the Commission's rules. As noted, the maximum rate established by the initial Form 1230 shall be a cap on the systems' rates during the waiver period. If the systems reach that cap and subsequently wish to raise rates further, they will have to justify the rate increase in accordance with our standard benchmark or cost-of-service rules. Alternatively, the systems can file another petition for special relief and seek continued treatment as a small system. Limiting Tennessee Cable and Smyrna Cable to a single Form 1230 filing for each franchise area provides further assurance that the systems will not have grown too large to be establishing rates under the small system cost-of-service methodology.

V. ORDERING CLAUSES

- 24. Accordingly, IT IS ORDERED that the Petition for Special Relief filed by Alexcom, L.P. requesting a waiver of the Commission rules defining systems subject to small system rate relief IS GRANTED with respect to Tennessee Cablevision, Inc. and Smyrna Cablevision, Inc.
- 25. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules. 52

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones Chief, Cable Services Bureau

Small System Order, 10 FCC Rcd at 7426. Under the small system rules, rate increases taken after the initial Form 1230 has been approved are not subject to further regulatory review, as long as the rate is no higher than that permitted by the previously-filed form. Id.

⁵² 47 C.F.R. § 0.321.

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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In re)		AEC AEC	HSA
Alexcom, L.P.)		12 b	
Oak Ridge, TN (TN0045) Cobb County, GA (GA0203, GA0016))	1707/214.1 Th		2

PETITION FOR SPECIAL RELIEF

Alexcom, L.P., the parent company of Tennessee Cablevision, Inc., and Smyrna Cable TV, Inc., (together "Alexcom"), by their attorneys, hereby request that the two systems referenced above be afforded the regulatory treatment afforded small cable entities under the Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266, 93-215, FCC 95-196 (June 5, 1995) (the "Eleventh Order"). Alexcom's two systems fall just over the standard eligibility cap established for small cable entities in the Eleventh Order. They are, however, precisely the sort of entities for which the Commission established a "special relief" mechanism to extend eligibility. The public policy goals underlying the Eleventh Order and basic fairness compel a grant of the requested relief.

I. ALEXCOM EXCEEDS THE STANDARD NUMERICAL CUT-OFF IN A TRULY DE MINIMIS FASHION

Eligibility for special rate treatment under the *Eleventh Order* is limited initially to small systems owned by small cable companies. Section 76.901 provides the controlling numerical definitions. Subsection (c) defines a "small system" as one with 15,000 or fewer

subscribers. Subsection (e) defines a "small cable company" as one with 400,000 or fewer total subscribers.

Alexcom easily qualifies as a small cable company. As of June 1, 1995, its two cable properties served a total subscribership of 42,539. Alexcom could be almost ten times larger and still qualify as a small cable company. Alexcom's cable subscribers are served by only two systems in the South. Tennessee Cablevision served 18,549 subscribers in Oak Ridge, Tennessee and the surrounding areas, while Smyrna Cable TV served 23,990 subscribers in the city of Smyrna and parts of Cobb County, Georgia. These systems, therefore, each only slightly exceed the 15,000 cap established under the new regulations, while the company itself is well under the 400,000 subscriber cap.

It would be illogical to deny Alexcom the relief afforded small cable entities. Alexcom does not disagree with the attention placed in the *Eleventh Order* to both company and system size, but it believes that each cut-off must be enforced with a reasonable degree of flexibility, particularly where (as here) one of the factors is extremely favorable.

The Commission itself has already acknowledged the appropriateness of extending regulatory relief beyond the standard numerical cut-offs. The Commission sensibly explained:

We recognize that establishing a numerical test can exclude some systems which may also be in need of rate relief. Therefore, we will entertain petitions for special relief from systems who fail to meet the new definitions but are able to demonstrate that they share relevant characteristics with qualifying systems and therefore should be entitled to the same regulatory treatment. [Eleventh Order at ¶ 36.]

The Eleventh Order properly recognized that it would be absurd to inflexibly distinguish between two systems "merely because ... one is just under, and the other just over, 15,000 subscribers."

Id.

The principal factor identified by the Commission to consider in special relief cases is "the degree by which the system fails either or both definitions." *Id.* In this case, Alexcom easily passes one of the numerical definitions (*i.e.*, operator size) and just barely fails the other (*i.e.*, system size). It would make no sense to deny relief to Alexcom, whereas another operator easily could have a dozen cable systems that were each only slightly smaller than Alexcom's two systems and yet that operator would still be afforded regulatory relief on every one of those systems.

II. THE PUBLIC INTEREST WOULD BE WELL-SERVED BY A GRANT OF THE REQUESTED RELIEF

The policy objectives that led to the creation of "small operator" relief would be well-served by granting the relief requested in this case. Alexcom is comprised of a small management team of three people, who are responsible for all aspects of the cable systems. Alexcom clearly faces the financial constraints of other small cable operators. The *Eleventh Order* identifies "increased costs (e.g., lack of programming or equipment discounts) as a justification for extending small cable entity relief." *Eleventh Order* at ¶ 36. This consideration clearly supports the instant Petition. "Bulk" discounts for programming and equipment acquisition (which can provide larger operators with substantial savings) are unavailable to Alexcom. Alexcom's experience is that most programming discounts for cable operators begin well above Alexcom's current size. With just over 40,000 subscribers, Alexcom cannot qualify for any significant discounts and is placed at a competitive disadvantage for acquiring programming and equipment.

Alexcom faces high operating costs because of its long-standing commitment to providing first class cable service, notwithstanding the limited size of its subscriber base.

Alexcom is committed to extending service into lower density areas, and the system in Tennessee has significant plant with less than 10 homes passed per mile. Alexcom is also committed to supporting locally developed programming. This local origination programming features general meetings, special events, sports activities and news. Alexcom has also been a participant in the Cable in the Classroom program, donated equipment to local educational institutions, and generally supported the local community.

Alexcom's financial problems are exacerbated by rate regulation. Administrative costs associated with regulatory implementation obviously are high, on a per-subscriber basis, for small cable operators. Moreover, the rate adjustment factors included in the Form 1200 "provisional" rate calculation (because they reflect surveyed 1992 rates, rather than 1992 costs) actually reward large MSOs and penalize small operators.

Recent developments in the financial markets have been extremely favorable to large operators, while systems of Alexcom's size remain dependent solely on banks for financing. A recent article in Multichannel News cited examples of Viacom, Cox, and Comcast Corp. raising each between \$150 million and \$1 billion in bond issues. The size of each of these operators exceeds one million subscribers. The ability of these MSOs to receive this kind of financing gives them the ability to remain competitive by rolling out new service, rebuilding plants, and maintaining their quality of service.

An expansion of eligible small system rules to include Alexcom's systems would provide a much needed alleviation of current constraints. The relaxation of certain rate rules would enable Alexcom to provide better service to subscribers. It would provide Alexcom with the financial certainty essential for establishing more definitive rates over a longer period of time.

This in turn will assist Alexcom in securing the financing needed to rebuild its systems so that they can offer the full range of services the cable industry has to offer. It will also ease Alexcom's administrative burden so that it can focus on building and delivering the much publicized "information highway."

Alexcom is asking for very limited relief. It is not asking to be exempt from rate regulation, but only to be eligible for the administrative benefits afforded small cable entities under the *Eleventh Order*. The requested relief requires only a very minor "relaxation" of the standard numerical caps. The adjustment will serve the public interest by protecting a small, independent cable operator from the substantial hardships of the revised benchmark regulations.

The relief also is critical to Alexcom continuing to provide top quality service to its subscribers and honoring its rebuild commitment. This case presents special circumstances warranting special relief.

CONCLUSION

For the foregoing reasons, Alexcom respectfully requests that the Commission grant the requested relief as soon as possible.

Respectfully submitted, ALEXCOM, L.P.

Rv.

Steven J. Horvitz

Christopher T. McGowan

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Washington, D.C. 20006

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Its Attorneys

July 27, 1995

CERTIFICATE OF SERVICE

I, Nichele Rice, hereby certify that I have this 27th day of July, 1995, caused a copy of the foregoing to be delivered by first class mail, postage pre-paid to the following:

Mr. Rick Brun Cobb Communications 100 Cherokee Street Marietta, GA 30090

City of Smyrna P.O. Box 697 Smryna, GA 30081 Attn: Bob Thomson

City of Oak Ridge P.O. Box 1 Oak Ridge, TN 37831

Oliver Springs P.O. Box 303 Oliver Springs, TN 37840

City of Clinton 100 Bowling Street Clinton, TN 37716

Roone County Courthouse Kingston, TN 37763

Anderson County 100 North Main Street Clinton, TN 37716

Nichele Rice

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February 16, 1996

Meredith J. Jones Chief, Gable Services Bureau Federal Communications Commission 2033 M Street, NW Room 918A Washington, D.C. 20554

Re: In re Alexcom, L.P. -- Petition for Special Relief, CSR-4568-D

Dear Ms. Jones:

The purpose of this letter is to supplement Petition for Special Relief ("Petition") filed in the above-referenced proceeding on July 27, 1996, by Alexcom, L.P. ("Alexcom"). In the Petition, Alexcom requested that its systems located in Oak Ridge, Tennessee (TN0045) and Cobb County, Georgia (GA0203, GA0016) be afforded the regulatory treatment afforded small cable entities under the Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266, 93-215, FCC 95-196 (June 5, 1995) (the "Small System Order"). Although Alexcom believes that the general circumstances set forth in its Petition provide a compelling basis to grant the requested relief, this supplement provides additional facts which describe the systems in terms of the particular characteristics identified by the Commission in the Small System Order and relied upon in Insight Communications Company, L.P., DA 95-2334 (Nov. 15, 1995) ("Insight"). These facts provide additional support for Alexcom's request. They show that the two systems at issue more closely resemble the average "small" system (i.e., under 15,000 subscribers) than the average "large" system (i.e., over 15,000 subscribers).

1. The Cable Services Bureau ("Bureau") noted in *Insight* that the average monthly regulated revenue per channel, per subscriber is \$ 0.86 for small systems and \$ 0.44 for large. *Insight* at \$ 26(a). Alexcom's Georgia and Tennessee systems have monthly

Meredith Jones February 16, 1996 Page -2-

regulated revenues per channel per subscriber of \$ 0.72 and \$ 0.76, respectively. These figures are far closer to the average small system than the average large system.

- 2. The Bureau has also looked to variations in the average number of subscribers per mile. *Insight* at ¶ 26(b). The average number of subscribers per mile is 35.3 for small systems and 68.7 for large systems. *Id.* Alexcom's Tennessee system has an average 35.4 subscribers per mile, almost exactly the average of small systems. Alexcom's Georgia system has an average 56.7 subscribers per mile, placing it between the figures for small and large systems.
- 3. Another characteristic relied upon in *Insight* was the average annual premium revenue per subscriber. *Id.* The average annual premium revenue per subscriber is \$ 41.00 for small systems and \$ 73.13 for large systems. *Id.* Alexcom's Tennessee system has an average annual premium revenue per subscriber of \$ 39.00, which is actually below the average small system. Alexcom's Georgia system has an average annual premium revenue per subscriber of \$ 65.00, which again is between the figures for small and large systems.

Thus, in every instance Alexcom's systems either closely resemble the average small system or at least falls between the two classifications. The overall factual comparison is more favorable than that presented by *Insight*, and the overall size of Alexcom and the absence of any ties to a major MSO make this a far easier case to resolve in favor of the cable operator than the *Insight* case decided last fall.

Alexcom appreciates the tremendous burdens under which the Cable Services Bureau labors, but it has been almost seven months since it filed its Petition. The enactment of the Telecommunications Act of 1996 in the interim only confirms Congressional support for easing the regulatory burden on small operators. Alexcom respectfully requests that the Bureau promptly grant small system relief for the referenced systems.

Meredith Jones February 16, 1996 Page -3-

If you have any questions or desire further information, please do not hesitate to contact undersigned counsel.

Respectfully submitted,

ALEXCOM, L.P.

By:

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Frederick W. Giroux

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Its Attorneys

cc: Tom Power, Cable Services Bureau (via hand delivery)

Service List

UNITED STATES GOVERNMENT

MEMORANDUM

TO:

Office of Managing Director

FROM:

Julie Buchanan

DATE:

October 29, 1997

RE:

Petitions for Waiver of Filing Fee

The Cable Services Bureau received the enclosed petitions for special relief. Each of the three petitions also sought a waiver of the required filing fee. In the orders issued by the Bureau resolving the substantive issues involved, the first footnote states that resolution of the filing fee waiver requests would be handled by the Office of Managing Director. Accordingly, we are enclosing copies of: (1) the requests for waiver of the filing fees; (2) the petitions for special relief and oppositions, if any; and (3) the orders released by the Bureau. Please direct any inquiries regarding these matters to JoAnn Lucanik, Chief of the Policy and Rules Division, at 418-7037.

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Counted right,

FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554

June 23, 1998

OFFICE OF MANAGING DIRECTOR

RECEIVED

OCT - 8 1998

SEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

David Tillotson, Esquire 3421 M Street, N.W., #1739 Washington, D.C. 20007

Re: Fee Control # 9607228195352004

Dear Mr. Tillotson:

This will respond to your request for refund of an application fee submitted on behalf of Alta California Broadcasting, Inc. (Alta) in connection with its application for a new FM station to operate on Channel 296C3 at Shasta Lake City, California.

You maintain that, due to the freeze on processing mutually exclusive broadcast applications, as a consequence of the decision by the United States Court of Appeals in Bechtel v. FCC, 957 F. 2d 929 (D.C. Cir. 1992), Alta's application has never received any processing. Further, you state that, pursuant to amendments to the Communications Act which were enacted as a part of the Balanced Budget Act of 1997, the Commission is no longer authorized to award new broadcast channels by comparative hearing. Instead, it is required to award mutually exclusive broadcast channels by auction. In light of this change by which the Shasta Lake City channel is to be awarded, Alta and the competing applicants entered into a settlement agreement, filed with the Commission on January 30, 1998, in which it has agreed to dismiss its application in consideration of a monetary payment. You contend that Alta is entitled to a refund of its application fee since its application has not been processed to date and, in view of the requested dismissal of its application, will receive no processing. Moreover, you argue that a refund is due because the Commission has modified its methodology for selection of broadcast station licensees.

The Commission's rules do not provide for refund of a filing fee upon the filing or the grant of a motion to withdraw an application pursuant to a settlement agreement. Moreover, the Commission has explicitly stated that a refund will not be granted once an application has cleared the fee review process, except in certain circumstances enumerated in Section 1.1113 of the Commission's Rules. 47 C.F.R. 1.1113. Section 1.1113(a)(4) of the Rules provides for refund of a filing fee when either a change in the rules or in the law nullify an application

already accepted for filing. In the case of Alta, however, because its application was dismissed on its own volition as part of a settlement agreement rather than as a consequence of a change in the rules or the law rendering it a nullity, no refund is due.

Thus, your request is denied.

Sincerely,

Thomas M. Holleran

Acting Associate Managing

Director - Financial Operations

9601228195352004 ORIGINAL RECEIVED

FEB - 4 1998

Holl 7

DAVID TILLOTSON Attorney at Law

Federal Communications Commissis
Office of Secretary

3421 M Street, N.W., #1739 Washington, D.C. 20007

Telephone: Facsimile:

(202) 625-6241 (202) 965-2018

February 3, 1998

Mr. Andrew Fishel, Managing Director Federal Communications Commission 1919 M Street, N.W., Room 852 Washington, DC 20554

Re: Request for Filing Fee Refund -BPH-960718MC

Dear Mr. Fishel:

I am writing on behalf of Alta California Broadcasting, Inc. ("Alta") to request a refund of the \$2,335.00 filing fee that Alta paid in connection with its above-referenced application for a new FM station to operate on Channel 296C3 at Shasta Lake City, California.

The Commission charges filing fees for applications for new broadcast facilities to defray its costs of processing applications. Because of the freeze on processing mutually exclusive applications which has been in effect as a consequence of the decision of the United States Court of Appeals in *Bechtel v. FCC*, 957 F. 2d 929 (D.C. Cir. 1992). Alta's application has never received any processing. Moreover, at the time Alta filed its application, it did so in response to a window filing notice which stated that the Shasta Lake City channel would be awarded by comparative hearing. However, pursuant to amendments to the Communications Act which were enacted as part of the Balanced Budget Act of 1997, the Commission is no longer authorized to award new broadcast channels by comparative hearing. Instead, it is required to award them by auction. In light of this change in the procedures by which the Shasta Lake City channel is to be awarded, Alta has entered into a global settlement with the other applicants for the channel pursuant to which it has agreed to dismiss its application in consideration of receiving a monetary payment. A Joint Petition for approval of this Global Settlement was filed with the Commission on December 15, 1997.

As Alta's application has received no processing, and will not receive any processing in view of the fact that Alta has requested dismissal of its application, there is no basis for the Commission to retain Alta's filing fee which was paid to defray the costs of the processing that its application will never receive. It is particularly appropriate that the Commission should refund Alta's filing fee since Alta's decision to withdraw its application resulted from a fundamental change in the methodology that the Commission will use to award the Shasta Lake City channel that was made

long after Alta's application was filed. In these circumstances, it would be fair to say that the fee was collected from Alta under false pretenses. Accordingly, it is requested that Alta's \$2,335.00 filing fee for its Shasta Lake City FM application be promptly refunded.

If you have any questions concerning this request, please call me.

David Tillotson

Sincerely

c: John Power (via fax)

Payment Transactions Detail Report

Date: 3/27/98

BY: FEE CONTROL NUMBER

Fee Control Number Payor Name Account Number Received Date

9607228195352004

ALTA CALIFORNIA BROADCASTING I

FCC2021773

07/18/96

PO BOX 3463

CAREFREE

AZ

85377

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check		rans Code	Payment Type	
\$2,335.00	\$2,335.00	1	MTR	1		ALTA CALIFORNIA BROADCASTING I	85377		\$2,335.00	1	PMT	_
Total						·			\$2,335.00			

FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554

August 5, 1998

OFFICE OF MANAGING DIRECTOR

RECEIVED

Mr. Herman F. Stamps General Partner Anchor Broadcasting Co. P.O. Box 379 Selbyville, DE 19975 OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Request for relief from the regulatory fee
Fee Control # 9709158835090004
Fee Paid: \$975

Dear Mr. Stamps:

This is in response to your request for relief from the Fiscal Year (FY) 1997 regulatory fee, for FM Radio Station WSBL, operated by Anchor Broadcasting Co.

Anchor was granted a construction permit by the Commission. After it commenced operation, the construction permit was set aside by the Court of Appeals. The Commission authorized Anchor to continue its service to the public. However, the pending mutually exclusive applications are subject to the comparative hearing freeze.

The Commission is authorized to assess regulatory fees against licensed broadcasters and holders of construction permits. Anchor is not subject to the regulatory fee and the fee paid will be refunded, because Anchor's construction permit has been set aside and its license application is still pending.

A check, made payable to the maker of the original check, and drawn in the amount of \$975, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 418-1995.

Sincerely,

Mark Reger

Chief Financial Officer

MEN SILVE

DKY

\$ "The Buzz Word

970965 8835090004

September 10, 1997

Federal Communications Commission Regulatory Fees P.O. Box 358835 Pittsburgh, PA 15251-5835

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Anchor Broadcasting respectfully clothes extraordingly, but compelling circumstances pertain in the payment of this for.

WSBL (97.9) is not licenced, nor is it w CP. It is altered in the unique static caused by the comparative hearing frome. We were already on the sir prior to the freeze, and were therefore directed to continue to service our public. Thusly, we are into our fifth year of broadcasting and community service. Officially, our reach people about 38,000 persons totally, and as an A class 3K, our part of the format among 20 stations feeding the same area. Assuming 100% of the population, the flee for a 38,000 reach for licence stations averages less than \$500. In reality, we actually serve only a small portion of that number.

In this limbo situation, it exacts an extreme penance, for even though having dutifully complied with every ruling, we now face the threat of auction (for our own value!) against paper challengers.

Even though this situation is unique, I am sure that the sense of your guidelines was not to punish our condition further.

very truly yours,

Herman F. Stamps, General Partner and CEO for Anchor Broadcasting Co.

WSBL 97.9 FM

P.O. Box 379 • Selbyville, Delaware 19975 302-436-WSBL (9725) • 410-352-3000 • 302-436-9726 (FAX) Payment Transactions Detail Report

BY: FEE CONTROL NUMBER

Fee Control Number

Payor Name

Account Number

Received Date

Date: 10/16/97

9709158835090004

ANCHOR BROADCASTING

FCC2041720

09/15/97

PO BOX 379

55 WEST CHURCH STREET

SELBYVILLE

DE

19975

	Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check		rans ode	Payment Type
	\$975.00	\$975.00	2	MUB7	1	WMF943	ANCHOR BROADCASTING	19975		\$25.00	1	PMT
	\$975.00	\$975.00	1	MNF7	1	WSBL979FM	ANCHOR BROADCASTING	19975		\$950.00	1	PMT
Total	<u>2</u>									\$975.00		

FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554

August 19, 1998

OFFICE OF MANAGING DIRECTOR

RECEIVED

OCT - 8 1998

Mr. R. D. Colaner President Arcey Broadcasting, Inc. 4601 Hills & Dales Road, N.W. Canton, OH 44708 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Request for Waiver of Regulatory Fees for Fiscal Years 1994, 1995, and 1996

Dear Mr. Colaner:

This letter is a follow up to your conversations with Mr. Putnam and your letter to him concerning the Fiscal Years (FY) 1994, 1995, and 1996 regulatory fees paid on behalf of Class D AM Radio WRCW, Canton, Ohio. You assert that you submitted waiver requests for each of those years but that copies of those requests are no longer available.

The Commission has no record of receiving the 1994, 1995 and 1996 requests, and you have been unable to provide copies. Accordingly, the Commission has no basis for waiving the FY 1994, FY 1995 and FY 1996 regulatory fees for WRCW.

Sincerely,

Mark Reger

Chief Financial Officer

TER 25 1938

9609168835192013330805

4601 Hills & Dales Road, N.W. • Canton, Ohio 44708

FEBRUARY .12, 1998

TO: TOM PUTNAM, FEDERAL COMMUNICATIONS COMMISSION

RE: FY1997 MASS MEDIA REGULATORY FEE WAIVER REQUEST FOR WRCW

DEAR MR. PUTNAM:

REGARDING OUR CONVERSATION CONCERNING WRCV'S REQUEST FOR MASS MEDIA REGULATORY FEE WAIVERS FOR 1994, 1995, 1996 & 1997, ENCLOSED FIND COPIES OF WRCW'S CHECKS FOR THE YEARS MENTIONED. MAKE NOTE OF THE AMOUNTS. THESE CHECKS WERE ACCOMPANIED BY LETTERS AND FORMS EACH YEAR REQUESTING A WAIVER. COPIES FOR 1994, 1995 & 1996 ARE NO LONGER AVAILABLE, BUT A COMPLETE COPY OF 1997'S CORRESPONDENCE IS INCLUDED.

THE INITIAL THREE YEARS OF FEES WERE CONSIDERED DETRIMENTAL TO DIFFICULT YEARS FOR AM RADIO STATIONS, BUT NOT FINANCIALLY DEVASTATING AS IS 1997. THE FEES FOR 1994, 1995 & 1996 AT LEAST RECOGNIZED THE DIFFERENCE BETWEEN STATION'S CAPABILITIES. I FEEL, AT THE VERY LEAST, A COMPLETE WAIVER FOR THE 1997 FEES ASSIGNED TO WRCW IS WARRANTED AND DUE FOR THE REASONS DEFINED IN OUR LETTER DATED SEPT. 12, 1997.

I TRUST THAT THIS LETTER WILL MEET WITH YOUR REQUESTS AND GIVE YOU THE INFORMATION NECESSARY TO EXPEDITE THIS ACTION FOR WRCW, A STAND ALONE AM DAYTIMER.

SINCERELY

RONALO D. COLAMER

PRESIDENT

ARCEY BROADCASTING, INC.

RDC/mah

ENCL.

CC: SENATORS CLENN & DEWINE, CONGRESSMAN RALPH REGULA



2060 Am

4601 Hills & Dales Road, N.W. • Canton, Ohio 44708

JAHJARY-10; 1995

TO: AMDREM S. FISHEL, MANAGING DIRECTOR, FEDERAL COMMUNICATIONS CO"MISSION

RE: FY1997 MASS MEDIA REGULATORY FEE MAIMER

DOAR MR. FISHUL:

REGARDING YOUR LETTER OF DECEMBER 10, 1997, TO SEMATOR JOHN GLENN (D-0410), I AN DISAPPOINTED WITH THE FACT THAT ALTHOUGH VROW REQUESTED A WAIVER (SEE ENCLOSED LETTER TO FCC DATED SEPTEMBER 12, 1997) I HAVE HEARD NOTHING REGARDING OUR REQUESTS FOR WAIVERS IN 1995, 1905 AND SPECIFICALLY WITH REFERENCE TO THE 1997 REQUEST. OUR REASONS FOR PRODUCSTING THESE WAIVERS ARE CLEARLY STATED AND DOCUMENTED WITH THE ENCLOSURES. SEMITOR GLENN'S REQUEST WAS ATMY DESIRE TO ADMAINT HIM AND OTHERS (SEE COPIES ON LETTER) OF THE UNFAIRNESS AND INEQUALITY OF THIS PROHIBITIVE FEETEN THE SMALLER BROADCAST LICENSES.

YOUR RESPONSE THAT MOST OF THE COMMENTS RECEIVED BY THE FCC FAVORED THE METHOD USED IN 1997 TO DETERMINE THE FEE, WE WOULD BE INTERESTED IN THE TOTAL MUMBER OF POSITIVE COMMENTS RECEIVED AND THE IDENTITY OF THOSE RESPONDENTS. BY OUR OWN SURVEY, WE HAVE FOUND NO ONE THAT CONSIDERED THESE FFES FAIR AND CONTABLE TO ANY BUT THE LARGEST STATIONS (SEE SECTION A-2 OF LETTER). AS TO YOUR COMMENT OF USING PROTECTIVE CONTOURS FOR LISTENER AND POPULATION NUMBERS, IT IS MORE THAN APPARENT THAT THESE CONTOURS DO NOT DESIGNATE POPULATION SERVED! AS I HAVE INDICATED WITH THE ACCOMPANYING MAP, OUR ASSIGNED THREE MILLION POPULATION IS MORE REALISTICALLY ONE MILLION POTENTIAL LISTENERS SERVED ONLY DAYTIME HALF OF EACH DAY. THIS SHOULD, IN ITSELF, BE REFLECTED IN THE FEE COMPLIATIONS.

AS STATED IN YOUR PUBLIC NOTICE OF AUGUST 1, 1997, UNIVERS UNDER THESE CONDITIONS ARE NOT ONLY POSSIBLE, BUT ARE EXPLICITLY REQUIRED. *ME ARE ENCOURAGED TO SEE THAT YOU ARE CONSIDERING THE 5TV CONTOUR FOR 1998 FEES SOMEWHAT AS SUGGESTED IN OUR LETTER, BUT UN FEEL THE 25MV CONTOUR WOULD BE MORE REALISTICALLY UTILIZED THAN ANY OF THE AFOREMENTIONED LEVELS. AS TO THE POPULATION SERVED, LOCALLY AND SPECIFICALLY, DAYTIME STATIONS ARE ALL LOCAL STATIONS. THERE SHOULD BE SOME ACKNOWLEDGEMENT GIVEN TO THE FINANCIAL IMPACT TO OUR STATION (DAYTIMER AND ALL OTHERS IN THIS CLASS (SEE A-2) SINCE YOUR RESTRICTIONS DIGTATE URCH'S SERVICE LIMITATIONS TO OUR COMMUNITY.

WITH RESPECT TO THE INDEPENDENT OFFICE APPROPRIATION ACT OF 1952 AND THE ECCAMATIONAL ASSOCIATION OF BROADCASTERS CHALLENGE IN FEDERAL APPELLATE COURT DECEMBER 16, 1976, FOR RELIEF OF FCC REGULATORY FFES UPHELD AND ACKNOWLEDGED WITH REFUNDS, WE BELIEVE A SIGNIFICANT MAIVER OR TOTAL REDATE OF ALL FEES FOR 1997 BASED ON UMFAIR AND UNEQUAL CONSIDERATION MOULD BE IN ORDER. MECH REQUESTS A TIMELY RETURN OF ALL FEES PAID IN SEPTEMBER, 1997.

SINCERELY.

ROUALD DE COLAMER, PRESIDENT

ARCEY PROADCASTING, INC.

ENCL.

CC: SENATORS GLENN & DEMINE, CONGRESSMAN RALPH REGULA, FCC COUNTISSIONERS



FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554

December 9, 1997

The Honorable John Glenn United States Senate 201 N. High Street, Suite 600 Columbus, OH 43215

Dear Senator Glenn:

Thank you for your letter of October 2, 1997, on behalf of Mr. Ron Colaner concerning the Commission's methodology for calculating AM and FM regulatory fees for FY 1997. You are correct in noting that this methodology may, in certain situations, result in increased fees for some stations.

The purpose of the new methodology, proposed and supported by the National Association of Broadcasters (NAB) and other industry representatives, was to provide an additional degree of equity to the FCC's fee schedule. Prior to FY 1997, AM and FM regulatory fees were determined only by the class of station. This led to claims of inequity since a rural station paid the same fee as a large metropolitan area station of the same class. In March 1997, the Commission solicited proposals which would revise the regulatory fees to accommodate differences in population served. Most of the comments we received favored the approach we adopted in June 1997. This approach utilizes a process whereby the daytime protection contour of a radio station is superimposed on a population grid using U.S. Census Bureau data. Actual fee amounts for FY 1997 were developed taking into account both class of station and the calculated population coverage.

We have heard from many broadcasters concerning the impact of using the daytime protection contour (0.5 mV/m for AM and either 54, 57 or 60 dBuV/m for FM). It appears that, in certain situations, a rural station's contour may reach into dense population areas. This can result in population counts that may not reflect what a station considers to be its primary service area. Although the Commission's rules provide for a degree of signal protection at 0.5 mV/m for AM or at 54, 57 or 60 dBuV/m for FM, we plan to revisit this methodology for FY 1998, as it has been suggested to us that the city grade contour (5mV/m for AM and 70 dBuV/m for FM) may serve as a better measure of population coverage. Our proposals for FY 1998 regulatory fees are expected to be released for public comment in February 1998.

I trust the information provided above is responsive to your concerns.

Sincerely,

Andrew S. Fishel Managing Director



SEPTEMBER 12, 1997

4601 Hills & Dales Road, N.W. • Canton, Ohio 44708

TO: FEDERAL COMMUNICATIONS COMMISSION

RE: WAIVER FOR 1997 MASS MEDIA REGULATORY FEES

WRCW - 1060AM, CANTON, OHIO, REQUESTS A WAIVER OF THE FY1997 MASS MEDIA REGULATORY FEES ASSIGNED TO THIS LICENSEE FOR THE FOLLOWING REASONS:

- A. ACCORDING TO THE INDEPENDENT OFFICE APPROPRIATION ACT OF 1952, SUCH FEES MUST BE "FAIR & EQUITABLE" (SEE EXHIBIT "A"). THE FEE ASSIGNED TO WRCW-1060AM, CANTON, OHIO, IS NEITHER FOR THE FOLLOWING REASONS:
 - 1. WRCW IS MANDATED BY THE FCC'S RULES AS A DAYTIMER, OPERATING ON 1060 IN CANTON, OHIO, ONE OF ONLY A FEW FORCED DAYTIMERS REMAINING IN THIS MARKET.
 - 2. SINCE THE INCEPTION OF THE MASS MEDIA REGULATORY FEES IN 1994, WRCN'S CLASS RATE OF \$275 (NOW SET AT \$1825) REPRESENTS AN INCREASE OF 560%..MAKING IT ONE OF THE HIGHEST RATES ASSIGNED TO ANY STATION IN THIS MARKET OR ACROSS THE COUNTRY...OBVIOUSLY NOT "FAIR & EQUITABLE" WHEN COMPARED TO LESS RESTRICTED STATIONS AT NEARLY THE SAME RATE WITH FULL TIME AND MUCH LARGER COVERAGE AREAS. GROUPING WRCW WITH THE FULL TIME, 50,000 WATT GIANT STATIONS IS VASTLY UNFAIR. IT GIVES NO CONSIDERATION TO THE GREAT DISADAVANTAGE OF A DAYTIME ONLY OPERATION. WE ARE FORBIDDEN, 50% OF THE TIME, TO OFFER LOCAL COMMUNITY SERVICES SUCH AS SCHOOL CLOSINGS, LOCAL SPORTS COVERAGE, EVENING NEWS OR EARLY MORNING WEATHER ADVISORIES AND COMMUNITY ALERTS DURING THE SEASONS WHEN THESE ARE MOST COMMON AND MOST NEEDED.
 - 3. POPULATION NUMBERS USED FOR RATE DETERMINATION ARE, AT BEST, DECEPTIVE, "UNFAIR" AND REDUNDANT NUMERICALLY AS ALL POPULATIONS ARE CREDITED TO EACH AND EVERY AREA STATION, ALL THE TIME. THIS IS IMPOSSIBLE. IN ADDITION, NO CONSIDERATION IS GIVEN TO DAYTIME ONLY STATIONS WHO HAVE NO LISTENING POPULATION 50% OF THE TIME.
 - 4. POPULATION NUMBERS ARE VASTLY EXAGGERATED TO GROSS NUMBERS WITHIN THE "LISTENABLE PATTERN REACH" (SEE EXHIBIT "B"). NOTE: POPULATION STATED FOR THE FEE..3.7 MILLION, ACTUAL TOTALS FOR A 5MV SIGNAL ARE APPROXIMATELY ONE MILLION, 50% OF THE DAY.

IN CONCLUSION, IT IS DESIRED THAT ONE OF THE FOLLOWING CONDITIONS BE GRANTED TO WRCW:

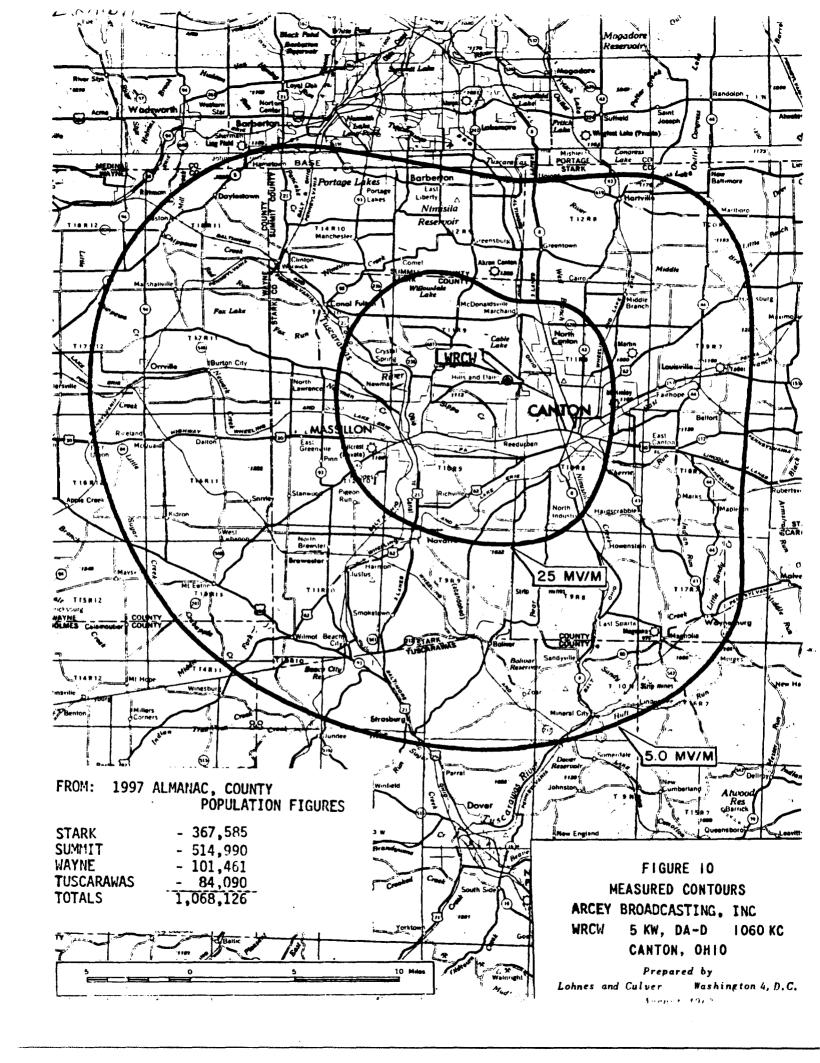
- A. PERMIT FULL TIME OPERATION AT 50,000 WATTS
- B. WAIVE ALL REGULATORY FEES.

SINCERELY.

R.D. COLANER, PRESIDENT ARCEY BROADCASTING, INC.

ENCL: FCC FORM 159, CHECK #1073, EXHIBIT "A" & "B"

CC: FILE, HON. RALPH REGULA, JOHN GLENN, MIKE DEWINE, ALL FCC COMMISSIONERS, NEW YORK TIMES, WASHINGTON POST, AKRON BEACON JOURNAL, CANTON REPOSITORY



Full Text of Opinions

No. 72-948

National Cable Television Association, Inc.. Petitioner,

77.

United States and Federal Communications Commission. On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March 4, 1974]

Sy lla bus

The Independent Offices Appropriation Act of 1952 thereafter the Act) authorizes each federal agency to prescribe by regulation such fee for the agency's services as is determined to be fair and equitable, taking into consideration the direct and indirect "cost to the government, value to the recipient, public policy or interest served, and other pertinent facts" Pursuant to the Act, the Federal Communications Commission (FCC), in revising fees imposed upon Community Antenna Television (CATV) systems, first estimated its direct and indirect costs for CATV regulations, and then, while retaining filing fees, added an annual fee for each CATV system at the rate of 30¢ per subscriber, concluding that this fee would approximate the "value to the recipient" used in the Act. The Court of Appeals, on a "review obtained by petitioner, a CATV trade association, approved the FCC's action.

1. The Act authorizes the imposition of a "fee." which connotes a "benefit" of "value to the recipient". The latter phrase is the proper measure of the authorized charge, not the "public policy or interest served" phraseology which if read literally would enable the agency to make assessments or tax levies whereby CATV's and other broadcasters would be paying not only for the benefits they received but, contrary to the Act's objectives, would also be paying for the protective services the FCC renders to the public.

2. The FCC should reappraise the annual fee imposed upon the CATVs. It is not enough to figure the total cost (direct and indirect) to the FCC for operating a CATV supervision unit and then to contrive a formula reimbursing the FCC for that amount, since some of such costs certainly inured to the public's benefit and should not have been included in the fee imposed upon the CATV's.

464 F. 2d 1313, reversed and remanded.

DOUBLAS, J., delivered the opinion of the Court, in which Burger, C. J., and Stewart. White, and Rehnquist, J.J., joined. Marshall, J., filed a dissenting opinion, in which Brennan, J., joined. Blackmun and Powell, J.J., took no part in the decision of the case.

Mr. JUSTICE DOUGLAS delivered the opinion of the Court.

The Independent Offices Appropriation Act of 1952. 31 U. S. C. § 483a provides in relevant part "It is the sense of the Congress that any work, service... benefit...license...or similar thing of value or utility performed, furnished, provided, granted...by any Federal agency... to or for any person (including...

corporations . . .) shall be self-sustaining to the tent possible, and the head of each Federal authorized by regulation . . to prescribe charge, or price, if any, as he shall determin be fair and equitable taking into considerat and indirect cost to the Government, value to ient, public policy or interest served, and ot nent facts Petitioner is a trade associ resenting CATV systems which transmit TV by cable. The Federal Communications Comauthorized to regulate these CATV outlets, as held in United States v. Southwestern Cable U. S. 157. The power to regulate, though n form of granting licenses, extends to the proof regulations requiring the compulsory origi programs by CATV. United States v. Midw Corp., 406 U. S. 649. These CATV's, howeve under the exclusive oversight of the Commissic governments and even some States provide p franchises to CATV's, including right of way cables used. Some communities in return for

The Committee Report, H. R. Rep. No. 384, 82d Cot pp. 2-3, makes the following comment on this measure. The Committee is concerned that the Covernment is ing full return from many of the services which it rende beneficiaries. Many fées for such services are specificallaw, and in some cases, it is specifically provided that r be charged. In other cases, however, no fees are charged the charging of fees is not prohibited; and in still other charged upon the basis, of formulae prescribed in law, plication of the formulae needs to be re-examined to actual charges into line with present-day costs and of considerations.

"It is understood that other committees of the Coi interested themselves in this matter and that studies not way which may result in further legislation to require the consideration be received for such services. However, are necessarily time-consuming and the required legislation be enacted for a considerable period. Accordingly, the has inserted language in the bill (Title V. page 60) we authorize and encourage the charging or increasing of extent permitted under present basic laws but which the way conflict with studies now under way to effect characteristics.

This estimated that in 1952 the Government will rithan \$300,000,000 in fees from sources of the type-consideration. It seems entirely possible that many of could be raised, and that fees could be charged for of of similar types in cases where no charge is now made to that the Government might realize upwards of \$50,000,000 revenue.

"The hill would provide authority for Government make charges for these services in cases where no charges at present, and to revise charges where present charges except in cases where the charge is specifically fixed by law specifically provides that no charge shall be made the Committee's intention in including this provision existing practices with respect to charges for postal as of power, or the interest on loans by the Government."

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BY: FEE CONTROL NUMBER

Fee Control Payor Account Number Name Account Number Date

9409028835293008 ARCEY BROADCASTING INCORPORATE 0341350131 09/01/94

4601 HILLS & DALES ROAD NW

CANTON

OH 44708

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$275.00	\$275.00	2	MUBN	1	KFU648	\$			\$25.0	0 1	PMT
\$275.00	\$275.00	1	MPAN	1	WRCW	\$			\$250.0) 1	PMT
Total 2									\$275.0	J	

BY: FEE CONTROL NUMBER

Fee Control Number Payor Name Account Number Received Date 09/15/95 9509188835169005 ARCEY BROADCASTING INC FCC2008749

4601 HILLS & DALES ROAD NW

CANTON

ОН 44708

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$340.00	\$340.00	2	MUBN	1	KFU648	ARCEY BROADCASTING INC			\$30.00	1	PMT
\$340.00	\$340.00	1	MPAN	1	WRCW	ARCEY BROADCASTING INC			\$310.00	1	PMT
Total 2	?								\$340.00	ľ	

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Date: 3/2//98

BY: FEE CONTROL NUMBER

Fee Control Number Payor Name Account Number Received Date

ARCEY BROADCASTING INC 9609168835192013

FCC2008749 09/16/96

4601 HILLS & DALES ROAD NW

CANTON

ОН 44708

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check		Trans Code	Payment Type
\$315.00	\$315.00	2	MUB6	1	KFU648	ARCEY BROADCASTING INC	44708		\$35.00	1	PMT
\$315.00	\$315.00	1	MRA6	1	WRCW	ARCEY BROADCASTING INC	44708		\$280.00	1	PMT
otal 2									\$315.00		

. aymont manaactiona Detail Repolt

Received Date

09/16/97

Date: 3/2/198

BY: FEE CONTROL NUMBER

Fee Control Payor Account Number Name Number

9709198835384012

COLANER, RONALD D

FCC2043542

4601 HILLS & DALES ROAD NW

CANTON

OH

44708

	Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check		rans Code	Payment Type	
	\$1,825.00	\$1,825.00	2	MUB7	1	KFU648	COLANER, RONALD D	44708		\$25.00	1	PMT	
	\$1,825.00	\$1,825.00	1	MGB7	1	WRCW	COLANER, RONALD D	44708	•	\$1,800.00	1	PMT	
Total										\$1,825.00			

FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554.

JL 16 1988

OFFICE OF MANAGING DIRECTOR

RECEIVED

OCT - 8 1998

Mr. Kenneth Stein President Ariel Broadcasting, Inc. 567 Lewis Point Road Ext. Saint Augustine, FL 32086 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Request for Reduction of Regulatory Fee Radio Station WAOC Fee Control # 9709188835814007 Fee Paid; \$1.400

Dear Mr. Stein:

This is in response to your request for a reduction of the Fiscal Year (FY) 1997 regulatory fee for AM Radio Station WAOC, St. Augustine, Florida, licensed to Ariel Broadcasting, Inc. WAOC was assessed a regulatory fee of \$1,400 for service to a population of 652,133. You allege that WAOC has a 30% decrease in advertising revenue between 1995 and 1996, and that it does not serve the population attributed to the station for fee purposes. You also assert that payment of the fee will force you to reduce live programming to the local community.

Congress established the total amount of fees that we are to collect for all services for FY 1997 and our fee schedule is formulated to spread the burden of the total fee requirement equitably among the various categories of fee payers, including broadcast licensees. The FY 1997 regulatory fees for all AM stations were derived by calculating the populations within the 0.5 mV/m contour of each individual station, which is their daytime protected service contour. The 0.5 mV/m contour extends beyond and includes populations not within a licensee's primary service area. However, as a matter of equity, recalculating a station's service area using a different contour for measuring population would require recalculating the service areas, populations, and fees, at a minimum, for all radio broadcast stations, in order to insure the Commission's ability to collect the required amount in fees and that licensees are treated equally.

We recognize that some broadcasters believe that the city grade contour which each licensee is required to place over its community of license may be a better reflection of the "core" population served by that station, and we contemplate using the city grade contour to calculate FY 1998 radio regulatory fees. However, the 0.5 mV/m contour is appropriate for calculating the FY 1997 regulatory fees because that contour represents the area in which listeners receive the station's protected signal. Thus, the Commission will not reduce, on an ad hoc basis, an individual station's regulatory fee solely because its population served would be lower had we relied on a different service contour.

In establishing its regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. Thus, the Commission decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). The Commission further held that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-2762.

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

In the absence of appropriate documentation, you have failed to establish a compelling case of financial hardship. Therefore, your request for reduction of WAOC's regulatory fees is

dismissed. However, in view of your allegations concerning the reduction of advertising revenue and the impact of the fee on your ability to provide live programming to the community, you may refile WAOC's request together with appropriate supporting documentation within 30 days from the date of this letter.

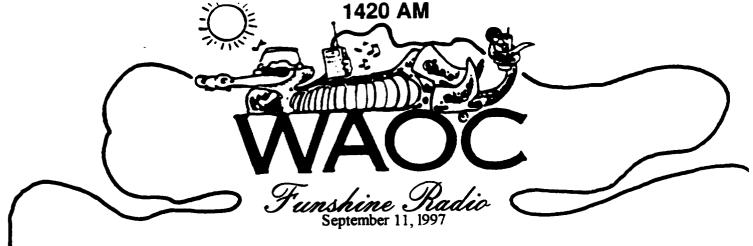
If you have any question concerning the regulatory fees, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,

Thomas M. Holleran

Acting Associate Managing

Director - Financial Operations



Federal Communications Commission Regulatory Fees P.O. Box 358835 Pittsburgh, PA 15251-5835

HDJ

Sirs:

Because of hardship, we request a reduction of the \$1,400 regulatory fee that you have assessed our station.

In 1996 our advertising revenue was \$124,742, about a 30% reduction from 1995 when our advertising revenue was \$180,674.

We do not feel that we cover a population of 625,133, as you indicate. In the over 12 years which we have owned WAOC, we have never received any correspondence or calls from more than 30 miles from our tower location at our above address. Our only advertisers have been primarily within St. Augustine. Our market of greater St. Augustine has about 50,000 people. The entire population of St. Johns County, in which we are centrally located, is about 100,000. When you drive around the far corners of St. Johns County, particularly the populated area south of Duval County, you cannot pick up our signal.

We have always considered ourselves a St. Augustine station, and have designed our programming to serve our area (about 7 hours daily of locally produced programs and local news, sports, weather and public service announcements designed for St. Augustine).

For us to pay \$1,400 would cause us extreme hardship, and we would have to reduce the amount of live local programming we provide to our community. We feel that it would be fair for us to pay the same regulatory fee which we paid last year, \$750. We trust that this meets with your approval.

Sincerely,

Kenneth Stein

President/General Manager

Ariel

BY: FEE CONTROL NUMBER

Fee Control Number Payor Name Received Date Account Number 9709188835814007 STEIN, KENNETH J FCC2043337 09/14/97

567 LEWIS POINT ROAD EXT

SAINT AUGUSTINE

32086 FL

	Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check		Trans Code	Payment Type
	\$2,425.00	\$2,425.00	3	MUB7	1		ARIEL BROADCASTING INC	32086		\$25.00	2	PMT
	\$2,425.00	\$2,425.00	2	MGD7	1	WAOC	ARIEL BROADCASTING INC	32086		\$1,400.00	2	PMT
	\$2,425.00	\$2,425.00	1	MGF7	1	WJQR	ARIEL BROADCASTING INC	32086		\$1,000.00	2	PMT
Total	3									\$2,425.00		

9607198195350010

ORIGINALRECEIVED

JAN 30 1998

DAVID TILLOTSON Attorney at Law

Federal Communications Commissio
Office of Secretary

3421 M Street, N.W., #1739 Washington, D.C. 20007

Telephone:

(202) 625-6241

Facsimile:

(202) 965-2018

January 30, 1998 Mr. Andrew Fishel, Managing Director Federal Communications Commission 1919 M Street, N.W., Room 852 Washington, DC 20554

Re: Request for Filing Fee Refund -BPH-960718MG

Dear Mr. Fishel:

WAIVER

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I am writing on behalf of Kevin and Diane Barth to request a refund of the \$2,335.00 filing fee that they paid in connection with their above-referenced application for a new FM station to operate on Channel 296C3 at Shasta Lake City, California.

The Commission charges filing fees for applications for new broadcast facilities to defray its costs of processing applications. Because of the freeze on processing mutually exclusive applications which has been in effect as a consequence of the decision of the United States Court of Appeals in *Bechtel v. FCC*, 957 F. 2d 929 (D.C. Cir. 1992), the Barths' application has never received any processing. Moreover, at the time the Barths filed their application, they did so in response to a window filing notice which stated that the Shasta Lake City channel would be awarded by comparative hearing. However, pursuant to amendments to the Communications Act which were enacted as part of the Balanced Budget Act of 1997, the Commission is no longer authorized to award new broadcast channels by comparative hearing, but instead, is required to award them by auction. In light of this change in the procedures by which the Shasta Lake City channel is to be awarded, the Barths have entered into a global settlement with the other applicants for the channel pursuant to which they have agreed to dismiss their application in consideration of receiving a monetary payment. A Joint Petition for approval of this Global Settlement was filed with the Commission on December 15, 1997.

As the Barths' application has received no processing, and will not receive any processing as the Hills have requested dismissal of their application, there is no basis for the Commission to retain the Barths' filing fee which was paid to defray the costs of the processing that their application never received. It is particularly appropriate that the Commission should refund the Barths' filing fee since the Barths' decision to withdraw their application resulted from a fundamental

Received June 98

change in the methodology that the Commission will use to award the Shasta Lake City channel that was made long after their application was filed. In these circumstances, it would be fair to say that the fee was collected from them under false pretenses. Accordingly, it is requested that the Barths' \$2,335.00 filing fee for their Shasta Lake City FM application be promptly refunded.

If you have any questions concerning this request, please call me.

David Tillotson

Mr. Tillotson Page 2

paid for in full." <u>Id</u>. At this juncture, however, the Commission merely has proposed to use auctions to resolve pending applications for new broadcast stations. Under the circumstances, given that the rulemaking is pending and that there is no final Commission decision with respect to pending broadcast applications and/or refunds, your refund request is premature.

Accordingly, at this time, your request is being denied without prejudice. In the event the Commission determines filing fee refunds are appropriate, you may refile your request in accordance with the Commission's decision.

If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 418-1995.

Sincerely,

Mark Reger

Chief, Financial Officer

rayment Hansactions Detail Report

BY: FEE CONTROL NUMBER

Fee Control Number Payor Name Received Date Account Number **BARTH, WERNER P** 9607198195350010 FCC2024482 07/18/96

6155 BRASSIE WAY

REDDING

CA 96003

Callsign : Payment Trans Payment Code _ Current Balance Applicant Name Applicant Zip Bad Check Detail Payment Seq Type Code Other Num **Amount** Quantity _Amount_ \$2,335.00 **CHANNEL296 BARTH RADIO PARTNERS** 96003 **PMT** \$2,335.00 1 \$2,335.00 1 1 MTR Total \$2,335.00

Approved by OMB 3060-0027 Expres 6/30/95

FCC 301

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

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CITY			1	(if foreign address)	Į.
l	Redding		California		96003
	PHONE NUMBER (Included) 916/246-3271	ie area code)	CALL LETTERS	Channel 296 Shasta Lake	
FOR	MAILING THIS APPLICAT	TION, SEE INSTRUCTIONS FO	OR SECTION 1 - GENE	RAL INFORMATION B	
2 A.	Is a fee submitted with	this application?			X Yes No
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3. T	his application is for (check one box) A	SHASTA LAKE CI BARTH RADIO PA		CA
	(b) Channel No. or Free 296 C3 107.1	(D) Prii		Lake City	State

Payment Transactions Detail Report

Date: 8/4/98

BY: FEE CONTROL NUMBER

Fee Control Number Payor Name Received Date Account Number 07/18/96 9607198195350010 BARTH, WERNER P FCC2024482 6155 BRASSIE WAY

REDDING

CA

96003

Payment	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check		ode	ayment
\$2,335.00	\$2,335.00	1	MTR	1	CHANNEL296	BARTH RADIO PARTNERS	96003		\$2,335.00	1	PMT
Total 1									\$2,335.00		

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554 August 31, 1998

OFFICE OF MANAGING DIRECTOR

Mr. Stephen L. Goodman Halprin, Temple, Goodman & Sugrue 1100 New York Ave., N.W. Suite 650 East Washington, D.C. 20005

Re: Request for Reduction of Regulatory Fee

Orbital Communications Corporation Fee Control # 9709188835761001

Fee Paid: \$135,675

Dear Mr. Goodman:

This is in response to your request for a reduction in the Fiscal Year (FY) 1997 regulatory fee for Orbital Communications, Inc. (ORBCOMM). The FY 1997 annual regulatory fee for a Low-Earth Orbit Satellite (LEO) system is \$133,675. ORBCOMM has authority to develop a constellation with 36 satellites, and has requested authority to expand its constellation to 48 satellites. ORBCOMM has launched two of its proposed satellites and is offering limited commercial services.

ORBCOMM argues that the LEO satellite fee is excessive. It maintains that the revenue from its two satellites is sufficient to pay only a small fraction of the total fee. ORBCOMM also contends that the total cost of regulating LEO satellites is only \$6,194, and that the regulatory fee has no relation to the actual cost of regulating the LEO service.

The Commission has previously considered and rejected arguments that licensees should pay only a portion of their annual regulatory fees until their LEO systems are completed.

Assessment and Collection of Regulatory Fees for Fiscal Year 1997, FCC 97-215, ¶¶ 73-75 (June 26, 1997). The Commission said that the timing of the completion of satellite systems is outside of the control of the Commission, and that requiring the fee payment will insure that we recover the regulatory costs related to LEO systems, with existing LEO systems not being burdened with paying the regulatory fees for new systems any longer than necessary. The Commission also noted that LEO licensees may obtain waivers of the fees upon a showing of financial hardship. Assessment and Collection of Regulatory Fees for Fiscal Year 1997, supra.

ORBCOMM's argument that the regulatory fees are not related to the costs of regulation, is without merit. When the Commission implemented its accounting system to calculate the FY 1996 regulatory fees, the costs initially allocated to LEO regulation were artificially low because employees involved in regulation used the wrong accounting codes. After consulting with Bureau supervisory personnel we estimated the costs of regulating LEO systems, and then adjusted the fee requirement for a pro rated share of those costs allocated to all services. For FY 1997, the revenue requirements were based on actual accounting figures, pro rated to include those costs attributable to all services. The artificially low cost figure, cited by ORBCOMM, has no relationship to the actual costs of regulating LEO service.

Thus the request for waiver is denied. If you have any questions concerning the fees, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,

Mark Reger

Chief Financial Officer

9104188835761001

J.m

HALPRIN, TEMPLE, GOODMAN & SUGRUE

1100 NEW YORK AVENUE, N.W., SUITE 650 EAST WASHINGTON, D.C. 20005

(202) 371-9100 TELEFAX: (202) 371-1497 HTTP://WWW.HTGS.COM

ALBERT HALPRIN RILEY K. TEMPLE STEPHEN L. GOODMAN MELANIE HARATUNIAN WILLIAM F. MAHER, JR. THOMAS J. SUGRUE
JOEL BERNSTEIN

J. RANDALL COOK

September 17, 1997

Federal Communications Commission

Attention: Petitions

P.O. Box 358835

Pittsburgh, PA 15252-5835

Re: Request for Reduction of Regulatory Fees

Dear Sir/Madame:

Orbital Communications Corporation ("ORBCOMM"), pursuant to Sections 1.1160(a)(3) and 1.1166 of the Commission's Rules, hereby requests a reduction in its annual regulatory fee payment for its low-Earth orbit satellite system. Under the newly adopted fee schedule, the annual regulatory fee for a low-Earth orbit satellite system is \$135,675. ORBCOMM has separately submitted that fee by wire transfer.

ORBCOMM is subject to this fee as a result of having successfully launched the initial two satellites of its low-Earth orbit constellation and begun to offer some initial commercial services. ORBCOMM believes the fee is excessive and highly disproportionate to the revenues ORBCOMM is receiving for its services, because until its full constellation is deployed, ORBCOMM can only offer service to a limited set of customers and applications. ORBCOMM thus requests a partial refund as explained below.

In the Order adopting the new regulatory fee schedule, the Commission recognized that given the necessity of a constellation of satellites in low-Earth orbit to provide service, financial hardship could result from imposition of the full fee when only a small part of the licensee's satellite system is launched. The Commission indicated that under such circumstances, low-Earth orbit system licensees "may obtain a

 $[\]frac{1}{2}$ 47 C.F.R. § 1.1156.

Assessment and Collection of Regulatory Fees for Fiscal Year 1997, MD Docket No. 96-186, FCC 97-215, released June 26, 1997 at 74-75 (hereafter cited as "Regulatory Fees Order").

Federal Communications Commission September 17, 1997 Page 2

waiver, reduction or deferment of the fee" 2". ORBCOMM believes that it presents such a case.

When fully deployed, ORBCOMM's constellation will consist of up to 36 satellites in low-Earth orbit. The initial deployment of two satellites allows ORBCOMM to offer some services where intermittent availability is sufficient. The majority of the potential Little LEO market demand, however, cannot be fulfilled with only a small portion of the constellation deployed. Thus, ORBCOMM has only been able to provide limited commercial service to date, and its full constellation is not expected to be deployed until early to midnext year.

As a result of these current restrictions on its system capabilities as presently deployed (with only two satellites in orbit), ORBCOMM is receiving only limited revenues for its commercial offerings. The annual regulatory fee of \$135,675 represents more than twelve times ORBCOMM's 1996 annual U.S. service revenues of \$11,012. Under these circumstances, ORBCOMM believes that collection of the entire regulatory fee would create a hardship, thus justifying a waiver or reduction.

ORBCOMM also believes that a waiver or reduction is justified because the annual fee of \$135,675 appears to exceed by a significant amount the Commission's cost of regulating low-Earth orbit satellite systems. To the extent the International Bureau is incurring costs in processing the currently pending applications or engaging in international coordination of the licensed systems, those costs presumably are already being recovered through the significant application filing fees for low-Earth orbit satellite systems -- currently set at \$255,080.

In addition, ORBCOMM observes that according to the Commission's own calculations of its costs of regulating

Regulatory Fees Order at \P 75.

Orbital Communications Corporation, Order and Authorization, FCC Rcd 6476 (1994); recon. denied, 10 FCC Rcd 7801 (1995). ORBCOMM has requested a slight additional amount of spectrum to add twelve satellites to its constellation, thereby enhancing coverage in the Northern Latitudes. Orbital Communications Corporation, File No 28-SAT-MP/ML-95. Report No. DS-1484, November 25, 1994. ORBCOMM's request to expand its constellation to 48 satellites is being considered in the current Little LEO processing round.

⁵/ 47 C.F.R. § 1.1107(10).

Federal Communications Commission September 17, 1997 Page 3

different services (as required by Section 9(i) of the Communications Act and as set forth in Attachment D to the Regulatory Fees Order), the actual FY 1996 regulatory costs for low-Earth orbit satellites (including overhead and other indirect costs pro-rated) was \$6,194. Even when those costs were pro-rated to meet the \$152 million target set by Congress for the Commission as a whole, the total costs for low-Earth orbit satellite regulation were only \$6,571. The Attachment then inexplicably presents an "Adjusted Pro-Rated Costs" for low-Earth orbit satellites of \$2,412,035, including only a cryptic footnote referring to adjustments because certain accounting codes associated with international activities were utilized for only a small portion of FY 1996.

The \$2.4 million adjusted cost is some 367 times the pro-rated cost of \$6,571, or 389 times the actual cost of \$6,194. Thus, unless the "small portion" of time the accounting codes for low-Earth orbit satellites were in effect was less than one day (which does not seem plausible since presumably the codes would have to be in effect for at least a two week pay period), then the adjusted cost is significantly overstated. Moreover, compared to the other adjustments to the international regulatory fees, the adjustment for low-Earth orbit satellites appears to be materially skewed. Accordingly, ORBCOMM believes that relief is also appropriate here because the new annual regulatory fees significantly overstate the Commission's costs of regulating low-Earth orbit satellites. The satellites of the commission's costs of regulating low-Earth orbit satellites.

In light of the relative hardship imposed on ORBCOMM's limited commercial services and the apparent excessive fee level,

Even assuming the codes were in effect for the minimum time of a two week pay period, then the total low-Earth orbit adjusted costs would be \$170,846 (26 x \$6,571), significantly below the \$2.4 million figure appearing in Attachment D. Footnote 7 of the Regulatory Fees Order indicates that adjustments were also made because the employees were not aware of the LEO and Signatory codes, and thus continued to allocate their time to the old categories (presumably Space stations and Earth stations). However, the adjustments to the four seemingly relevant categories reflects significant increases to the LEO and Signatory categories, along with an increase to the Earth stations category, that together far exceed the reduction to the Space stations category.

In addition to this requested reduction, ORBCOMM has also filed a petition for reconsideration of the annual regulatory fee level set for the low-Earth orbit satellites. See ORBCOMM Petition for Reconsideration, filed August 11, 1997.

Federal Communications Commission September 17, 1997 Page 4

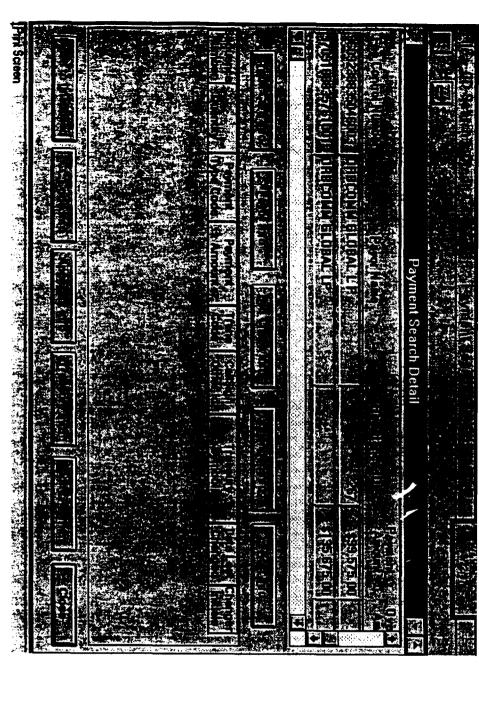
ORBCOMM requests a reduction of its annual fee payment for 1997. ORBCOMM seeks a reduction and refund of at least 50 percent because of these considerations. ORBCOMM believes, however, that the most appropriate annual regulatory fee would be \$6,571, the total, pro-rated costs for low-Earth orbit satellites. ORBCOMM respectfully requests expeditious review of this request.

Please contact the undersigned if you have any questions with regard to this matter.

Sincerely,

Stephen L. Goodman Counsel for ORBCOMM

cc: William Caton
Andrew Fishel
William Kennard



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• U.S. GPC:

OPTIONAL FORM 41 (Rev. 7-78)

Freechbod by GSA FPMR (41 CFR) 101-11,206